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R E P O R T S
OF THE
P R O C E E D I N G S
BEFORE

Select Committees
OF THE HOUSE OF COMMONS,
IN THE FOLLOWING
Cases of Controverted Elections;

V I Z.

HORSHAM,
SUTHERLAND,
HONITON,

STEYNING, Ist and 2d.
ROXBURGH,
CIRENCESTER;

HEARD AND DETERMINED

During the Second Session of the Seventeenth
Parliament of Great Britain.

BY SIMON FRASER, Esq.
BARRISTER AT LAW.

*Ut non modo casus eventusque rerum—sed ratio etiam
causæque noscantur.*

TACITUS.

V O L. II.

LONDON:
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AND T. AND J. EGERTON.

1793.



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ERRATA.

In CASE I. (*Passim*) for *Irvine* read *Irwin*

Page 12, line 27, after *relicts* add and fines

18, 22, for *this* read *his*

28, 6, read in actual, &c.

68, read 64. William Smith

86, 24, for *Daniel* read *Denzil*

Ib. 31, for *cartilege* read *curtilege*

97, 9, for *lease* read *deed*

The Reader is requested to correct the following errors in some copies of Vol. I.

Page 139, in the last line, for *recover* read *reconvey*.

Pages 273 and 320, for *members* read *numbers*.

Page 349, for *occupiers* read *overseers*.

PREFACE.

P R E F A C E.

THE favourable reception with which the Public has honoured the first volume of these Reports, published within four months after the decision of the last case contained in it, and the friendly communication of papers relating to the different causes with which I have been favoured, have encouraged me to attempt a second volume, drawn up with the advantage of greater leisure, and on that account, I trust, with a greater degree of accuracy. I was on this occasion naturally anxious to collect the opinion of my friends, and, if possible through them, that of the public, on the defects of my former plan, as the best rule for amending it in future; and as I must confess that the general observation

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I met

I met with was, that I had detailed the facts and arguments at too great a length, and that the speeches of the Counsel in opening and summing up the cases ought to be condensed into one argument, and the replies almost entirely omitted ; I owe it as a just tribute of deference to my friends and as a matter of right to the public, to state the reasons which induce me to continue the mode of reporting I at first adopted.

It must be allowed, that the objection I have mentioned is inherent in the very nature of the undertaking ; and accordingly it was started by every person without exception who had not read the book, but not by every one who had read it. I was fully aware of this from the first ; and my only hope was, that in the execution of the design, I might palliate what seemed a radical defect. I was induced to attempt this from the advantages which I thought would attend such a work, if well executed, and the example of many authors
whose

whose reports are much esteemed, though the arguments are detailed at a very great length. The first case in Plowden, which many reporters would have comprised in a page, extends to ten leaves in folio; yet there is something extremely interesting in his writings, which leads one to peruse them, as well from a desire of thoroughly understanding the cases which he reports, as from a sympathy which we feel with the sentiments and character of the pleaders.

If this manner of reporting has succeeded, where the cases were argued before the Judges of our Common Law-Courts, and all the facts previously settled and placed upon the record, it seems more proper to be adopted when causes come before a tribunal which must ascertain facts as well as judge of law, and can besides correct the harshness of a rigid construction by the lenity of equitable jurisprudence. Such is the tribunal erected by Mr. Grenville's act. In a judgment given by it, every circum-

stance may have weight; and therefore in a report of its proceedings no circumstance ought to be omitted. It will otherwise happen (as indeed has frequently been observed, where the report is short, and merely states the principal points contended for, some of the evidence, and the determination) that the reader may not be able to collect the grounds on which the Committee decided, though it is an unfair presumption to suppose that they decided without some reason. The real history of the cause, the complexion, if I may so say, of the Court, the reason of the decision, which are all necessary considerations in settling the authority of the precedent, can only be fully and fairly learnt from the speeches of the Counsel, who understand their cause best and who always shape their arguments in such a way as to give them the necessary effect. Did the Committee declare the reasons on which they form their judgment, the observation would not apply so strongly; and accordingly the advantage of this knowledge has given peculiar weight to the reports

ports of Serjeant Glanville, who was Chairman of the Committee of Privileges in 1624; and has enabled him to unite a greater degree of perspicuity and conciseness than can be aimed at by any person who is not a member of the Committee, whose decisions he reports.

I am inclined to hope that this mode of reporting, while it tends to elucidate each particular case, cannot excite any unpleasant sensation in the minds of the Gentlemen who have discharged an important and laborious duty to their country, by sitting upon these Committees, or of the learned Counsel who have argued the cases with so much advantage to the parties; but that, on the contrary, it will meet with the approbation of both, because by a kind of reflection it will present them with a picture of those well-fought fields, in which they have militated with so much honour to themselves and advantage to the public. Other Gentlemen in the profession of the law will perhaps think that

the Work cannot be so easily referred to as if it had been more concise; but I hope they will pardon this inconvenience when they consider that the reports, if of any authority, must be consulted by many who have not professional habits or professional information. In the summings up and replies they will find the facts and arguments chiefly relied on, while the other parts of the cases, it is hoped, will afford additional information to those who have leisure and inclination to consult them. The Public in general, I trust, will be gratified by a full report, which must convince every unprejudiced person of the discrimination, accuracy, honour, and impartiality of the tribunals by which election-cases are decided; and may perhaps remove some of those objections which are unthinkingly made against the excellence of our constitution. With respect to the Rights of Election, it may be justly said to this Court of Judicature, in the language of Cicero, *Ubicunque Jus Civium violatum sit, statuitis id pertinere ad communem causam libertatis et dignitatis.*

But

But as, on the one hand, the plan I have adopted has disadvantages which are apparent on its first inspection, so, on the other, it furnishes many resources to correct them which are not so obvious. It does not always happen that the opening speech of counsel discloses the whole case meant to be relied on: they may not be perfectly sure how the facts will turn out in evidence; and on that account much will frequently be left to the junior. A laudable prudence will often prompt the reservation of an argument till the reply, in order that it may then be urged without the fear of contradiction; and even where the leading counsel is possessed of the brightest talents, and is most thoroughly master of his case, it is every day's experience that new arguments may be started by one who follows him, and an old argument placed in a better light. Where exactly the same line of reasoning is adopted, a reporter will of course avoid repetition, and may without much censure introduce only some of the points into the first speech, re-

serving the others for the second. So also where the case turns upon the discussion of particular votes, as all the facts ought to be concentrated in one point of view, he may do this without a dereliction of his plan. As to the reply, it will generally be found to furnish matter for a new argument without repeating what has already been insisted on.

Thus I have shortly given the reasons which have induced me to persevere in that mode of reporting which I formerly thought best adapted to the nature of my undertaking. The pains I have bestowed on it will be amply repaid, if the execution of it shall be thought to justify transferring the motto which I have prefixed to this volume, from the history of politics to the history of political causes; and if the Work shall be allowed not merely to have recorded the determinations of the several committees, but to have suggested, as well as may be, the reasons and grounds of their decisions.

I beg

I beg leave to add a word relative to two provisions of a late act of parliament; the first of which is taken into consideration by every Committee; and the second is necessary to be adverted to in perusing the cases of the borough of Steyning. The legislature having thought fit to provide a remedy against petitions presented without any real or probable ground of complaint, and also against a captious opposition to petitions unquestionably just, has provided in the 18th section of the 28 Geo. III. cap. 52. that Committees shall report to the House whether the petitions referred to them *did or did not appear to them to be frivolous or vexatious; and that they shall in like manner report with respect to every party or parties who shall have appeared before them in opposition to such petition, whether the opposition of such party or parties respectively did or did not appear to them to be frivolous or vexatious.* Whenever a petition or the opposition to it is so reported to have been frivolous or vexatious, the party injured is entitled to recover

recover the full costs and expences which he has thereby incurred, and which are to be taxed by the clerk or clerk-assistant of the House, and any one of the following officers: the masters in Chancery, clerks of the court of King's Bench, Prothonotaries in the court of Common Pleas, or clerks in the court of Exchequer. Some observations on this necessary part of the report of every Committee may be found at the end of the Sutherland case, and the note annexed to it. The words *frivolous* and *vexatious* certainly bear different meanings; and some Committees, as the Bodmin and Orkney and Zetland, have reported petitions to be frivolous, but not vexatious. But it should seem that such a report, though not expressed in terms equally harsh, would still entitle the successful party to demand and recover costs; for the particle *or* introduced into the act being disjunctive, it is sufficient that the petition or the opposition to it be either frivolous *or* vexatious, to bring it under the predicament
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of the law. The question might have been doubtful had the act required the petition to be reported to be frivolous *and* vexatious.

The second provision of the act is, That, empowering Committees to call for statements of the Right of Election, or the right of chusing, nominating, or appointing the returning officer, contended for by the parties, whenever they shall be of opinion that the merits of a petition wholly, or in part, depend upon such right; and also requiring them to report to the House their judgment upon such statements. Notice of this decision is sent to the returning officer of the place, inserted in the Gazette, and affixed to the doors of the county or town-hall, or church nearest to the place of election, in order that any person may, within twelve calendar months from the day of the report, petition the House to be admitted a party to oppose the right so reported. Within the same time any person may petition the House to be admitted a party to defend the right reported, which
is

is to be finally determined by a Select Committee, appointed to try and determine the merits of such petitions so far as they relate to any question respecting the Right of Election. The first instance of a Committee appointed under this act was for the borough of Steyning; the proceedings before which, are to be found in this Volume. It became proper to decide the question of Right in that Borough, in the stage in which it was decided, from this circumstance, that the first Committee which sat in 1791, gave the right to the inhabitants of ancient houses; one of the petitioners who then succeeded, soon after vacated his seat; but the returning officer again returned a member chosen by the inhabitants at large, contrary to the decision of the Committee. The Committee of Appeal confirmed the opinion of the returning officer, and determined in favour of the extended Right of Election; so that the Committee appointed to try the merits of the petition respecting the seat which had been vacated, were bound as to the Right
by

by the decision of the Committee of Appeal. Notwithstanding this adverse decision as to the right, the petitioner ultimately succeeded as to the seat; so that it happens somewhat singularly, that two members for the Borough, supported by the same interest, at present sit in the House upon different rights.

As to the cases from Scotland contained in this Volume, the reporter would feel himself highly gratified if they should be thought to contribute, though in a small degree, to settle the election-law of that part of the island. A spirit of reform in that particular seems to prevail there, which it will be difficult either to indulge or to repress. Perhaps the qualification of voting in the county of *Sutherland*, where the Right of Election is infinitely more extended than in the rest of Scotland, though from particular circumstances the voters may be few in number, might furnish a hint for a moderate Constitutional Reform in other counties. But on this subject the reporter will
not

not hazard more at present, as he is aware of the difficulty of suggesting any plan of Reform to which innumerable objections might not be made. He has only further to observe, that it being impossible for him to be present during the whole of the Roxburgh and Cirencester causes, as other Committees were sitting, he has given the arguments in the first of these cases, from the notes of a friend at the Bar, on whose accuracy he can rely; and has extracted the account of the latter from the minutes of the Committee.

Hare Court, Temple,
January, 1793.

I.

THE

C A S E

Of the Borough of

H O R S H A M,

In the County of SUSSEX,

B

The Committee met on the 16th of February 1792,
and was composed of the following Members :

Rt. Hon. Thomas Pelham, *Chairman*,
James Buller, Esq.
Thomas Kempe, Esq.
Hon. Edward Finch,
Marquis of Titchfield,
Clement Tudway, Esq.
John Anstruther, Esq.
George Sutton, Esq.
Hon. Edward James Elliott,
Lord Viscount Downe,
Patrick Millar, Esq.
Sir John Woodhouse,
John Galley Knight, Esq.
Charles Bragge, Esq. *Nominee of the Petitioners*,
Hon. T. Maitland, *Nominee of the Sitting Members*.

Petitioners,

1. Lord William Gordon and James Baillie, Esq.

COUNSEL,

Mr. Partridge, Mr. Douglas.

2. Electors in behalf of Lord William Gordon and
Mr. Baillie.

COUNSEL,

Mr. Fonblanque.

Sitting Members,

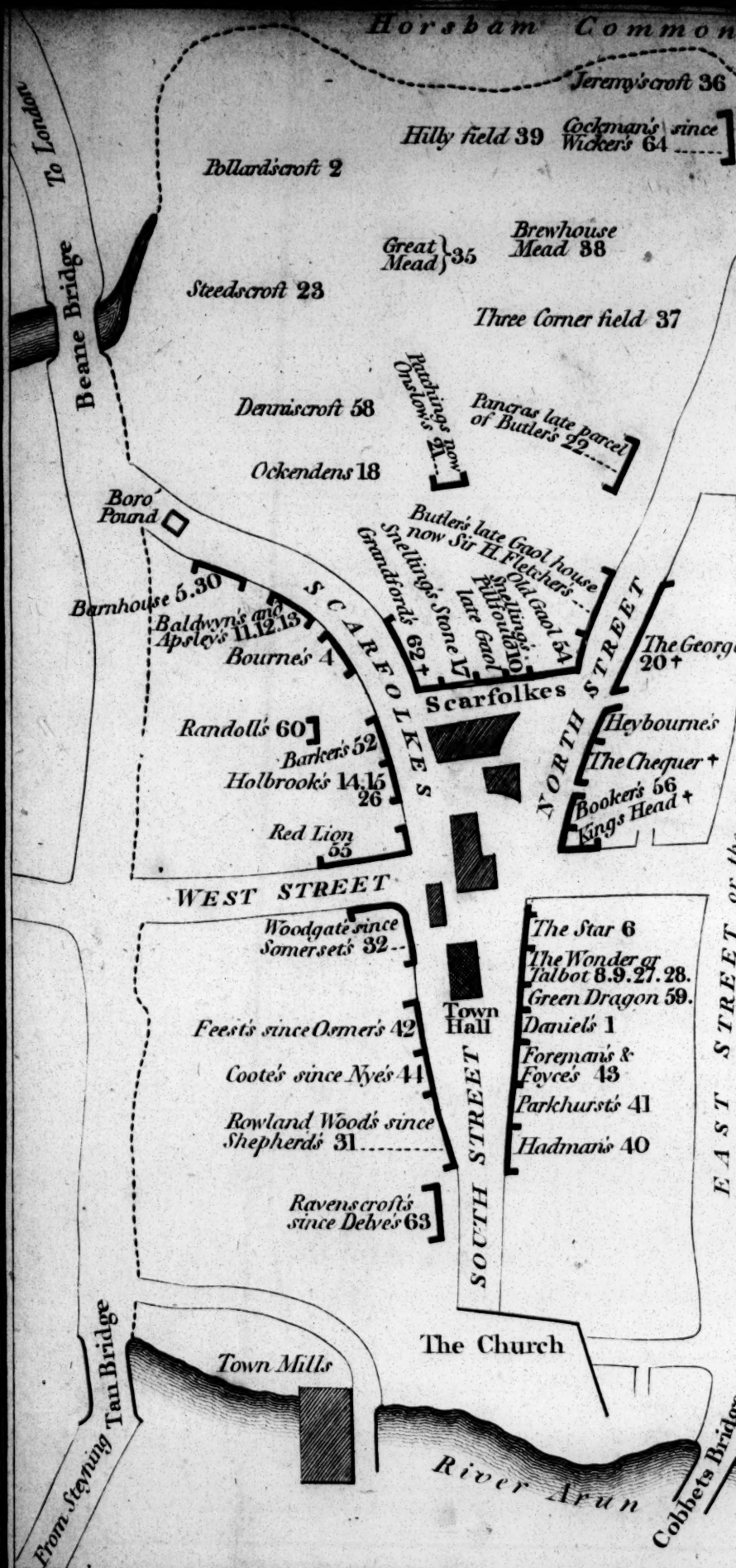
Timothy Shelley, Esq. and Wilson Braddyl, Esq.

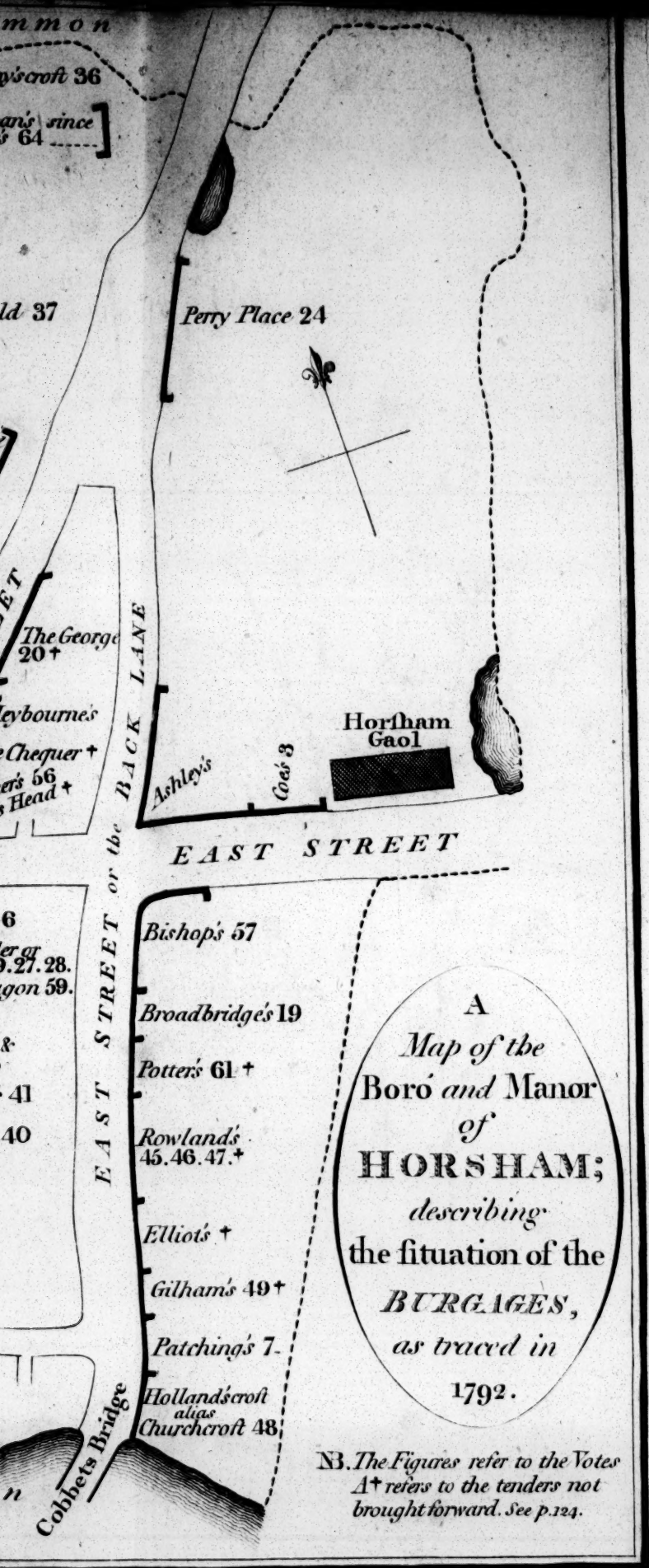
COUNSEL,

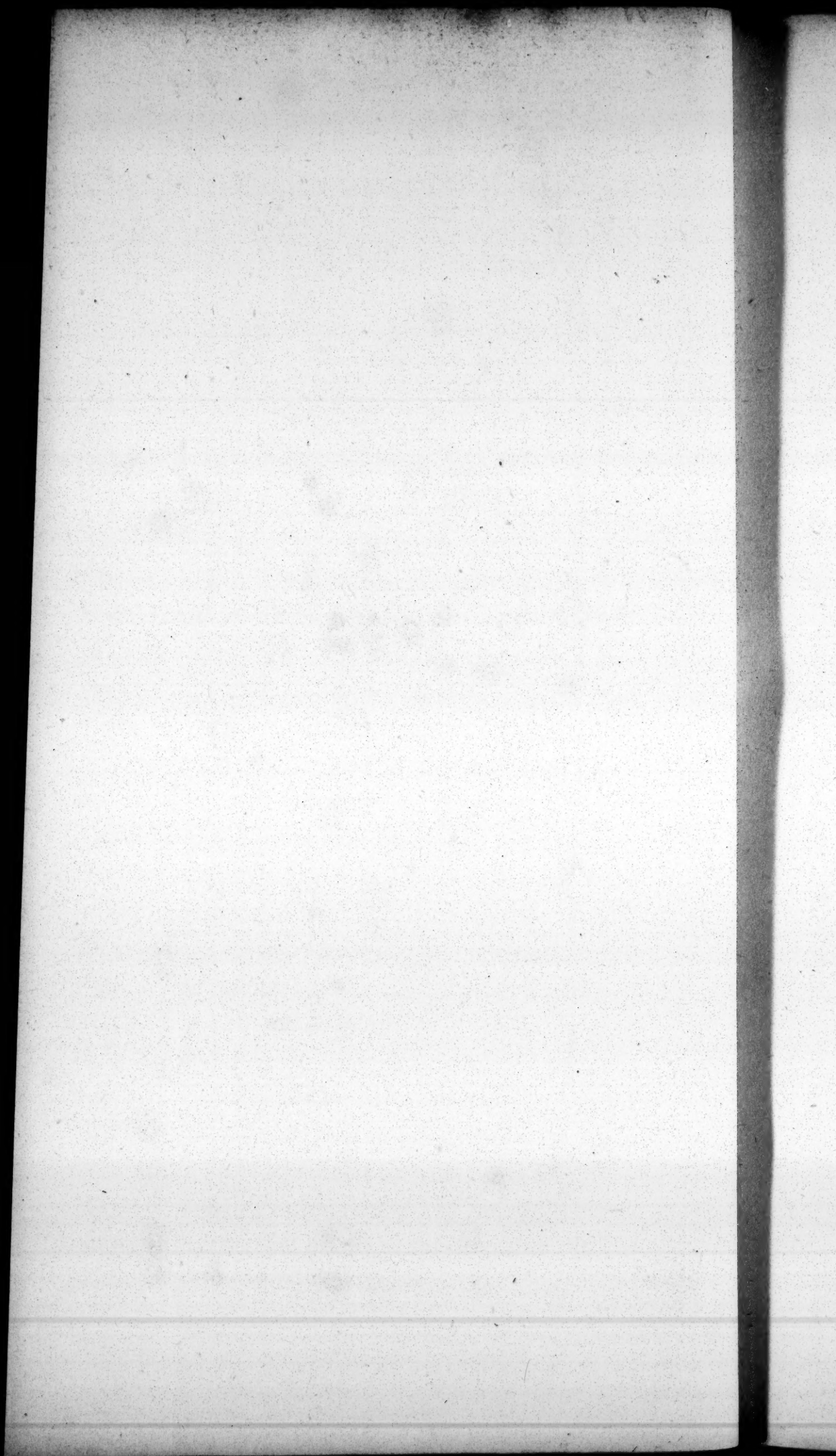
Mr. Serjeant Bond, Mr. Graham, and (in the ab-
sence of Serjeant Bond) Mr. Milles.

Counsel for the Returning Officer,

Mr. Chambre.







THE
CASE

Of the Borough of

H O R S H A M.

THE petitions of the candidates, which were the same in substance with those of the electors, stated, That at the last election of members to serve in parliament for the borough of Horsham in the county of Suffex, which was held at the said borough on Saturday the 19th day of June 1790, the petitioners and Timothy Shelley and Wilson Braddyll, Esqrs. were candidates: That at the said election Drew Mitchell and John Rawlinson the bailiffs and returning officers of the borough, who had been nominated or appointed to the said office of bailiffs by Thomas Charles Medwin as steward of his Grace Charles Duke of Norfolk Lord of the manor and borough of Horsham aforesaid, acted with gross injustice and partiality in favour of the said Timothy Shelley and Wilson Braddyll: That the said bailiffs, on a poll being demanded, appointed the

saïd Thomas Charles Medwin and James Robertson his clerk, to be their poll clerks for taking the poll at the saïd election, although Medwin was the known agent and partizan of Messrs. Shelley and Braddyll: That at the saïd election a great majority of the lawful electors of the borough offered their votes in favour of the petitioners Lord William Gordon and Mr. Baillie, but that the bailiffs and returning officers, in direct violation of the right of election in the borough as established by the last determination of the House of Commons, rejected the votes of such majority, and received the votes of divers persons in favour of the saïd Timothy Shelley and Wilson Braddyll, who had no right to vote at the saïd election; that having thereby procured a colourable majority in their favour, they had returned Mr. Shelley and Mr. Braddyll; whereas the petitioners were duly elected, and ought to have been returned. Lastly, That the saïd Thomas Charles Medwin was guilty of great partiality and misconduct in taking the poll, as poll clerk at the saïd election.

The last determination of the House of Commons respecting the right of election for this borough, is to be found in the 18th vol. of the Journals, p. 175, on the 16th day of June 1715; and is as follows :

“ Resolved,

“Resolved, That the right of election of members to serve in parliament for the borough of Horsham in the county of Suffex, is in all such persons as have an estate of inheritance or for life in burgage houses or burgage lands, lying within the said borough.”

This having been read and followed by the order of the 16th of June, 1735, restraining counsel from offering evidence contrary to the last determination of the House,

Mr. PARTRIDGE,

On behalf of the petitioners, said, That he should briefly enumerate the circumstances attending the poll, which he trusted when proved by the evidence he had to adduce, would fully substantiate the allegations of the petition that his clients had a majority of voices, and that the returning officers had acted with gross partiality and in direct violation of the solemnly adjudged right of election in the borough. As to the right itself, little labour was thrown upon him to explain it, the House of Commons having clearly decided in the words of the resolution, That all persons have a right to vote who have a freehold estate in burgage houses or lands, without adding any other qualification or admitting any other persons to participate it. He apprehended that the language of the resolution was

clear, and that it must convey a distinct idea to every person who hears it ; but the returning officers had thought proper to suppose that persons who possessed the qualifications described by it, must also be presented by a certain homage, and admitted to their property by the steward of the borough ; and when persons were tendered to vote, who, beyond all doubt, had the qualifications required by the resolution, they were rejected because they did not possess those other requisites which were then thought necessary. It would appear to the Committee, that the burgage property in this borough has all the requisites which are said by Littleton (*a*) to belong to that tenure. The burgages are within the limits of an ancient borough, and are holden of the Lord of that borough at a certain rent. It appears by some proceedings of the Attorney General in the reign of James I. against the then Lord of the borough, that the Earls of Arundel and Surrey, the ancestors of the present Duke of Norfolk, had been immemorially Lords of the borough, and admitted the burgage tenants to their burgages, which were in number 52 : That these tenants constituted a corporation which also existed by prescription, and paid for their possessions fifty-two shillings annually, being

(*a*) Book. I. § 170.

twelve pence for each entire burgage, or a proportionate sum for a fractional part. In this borough and manor certain courts have been customarily holden, and amongst others a Court Baron annually at Michaelmas, to which come the bailiffs and burgessees who constitute the corporation. The principal business of this court now, is to elect his bailiffs for the ensuing year; for the Lord's steward having appointed an homage, they present four burgessees to the Lord, who nominates two of them to be bailiffs, who, by virtue of their office, are the returning officers of the borough. It was to this court, he understood, that it was meant to be contended that all persons who have estates of burgage tenure in the borough, are bound to come to be presented by the homage, and admitted by the steward: a proposition which he totally denied. The burgage property in this borough is, like other freehold property, transferrable by legal conveyances: it is devisable; if not devised, descends to the heir, and may be bought and sold in the lifetime of the proprietors. It is indeed true that this property is holden by the render of a certain rent to the Lord, and that fealty with suit and service may be exacted from the tenants in the Lord's court; but fealty gives no other interest to the person doing it, than he had before in the land. The land is the proprietor's before he does the

suit and service; which, if he neglects or refuses to do, the Lord must compel him to perform by legal coercion. The Lord has undoubtedly an interest and a right to know what change of property takes place among his tenants, and the presentments of the homage jury may be proper and necessary to instruct him on whom to call for the performance of these duties; but the omission of that circumstance cannot affect the right of voting, which, according to Lord Holt, in the case of Ashby and White^(a), in such boroughs "is an original right incident to and inseparable from the land." By a reference to the Journals, it will appear that the very question now meant to be agitated, was decided in 1715: it ought not therefore to be again brought forward. At that time two gentlemen, of the name of Ingram, were petitioners against the sitting members Sir Harry Goring and Mr. Eversfield. Both parties agreed that Horsham is a borough by prescription, and that only burgage tenants in fee or for life had the right of voting; but *the sitting members counsel insisted it was essentially necessary they should be presented by the Homage Jury, which was denied by the petitioners Counsel.* Evidence was adduced on both sides to the Committee; after

(a) Raym. 951.

hearing which, they came to a resolution, expressed in the very words which were afterwards adopted by the House, but which omit the presentment contended for by the sitting members, and consequently exclude the necessity of that circumstance, which alone they were called upon to decide. That the resolution of the Committee was so understood by the parties is apparent from this, That the petitioners proceed to place on the poll the names of fifteen persons, not one of whom was presented by the homage or admitted by the steward, without any opposition on this head from the sitting members; who in their turn offer to add four to their poll, *who were proved to have tendered their votes, and were refused, because not admitted by the homage.* The borough does not afford many instances of contested elections; as about the year 1740 most of the burgage property centered in Henry Lord Viscount Irwin, and has remained ever since in that noble family; but it will be found that almost every return bears the names of voters who had not the qualification now contended for: a circumstance which would weigh much against the present returning-officers, who had conducted themselves in a manner so different from their predecessors.—Mr. Partridge then stated the circumstances attending the Court-Baron, which was held on the

day of the election ; but these it will not be necessary to mention, as the Committee afterwards determined that this evidence was inadmissible. From the facts which he stated, he inferred that the steward wished to trifle away the time, and to admit as few of Lady Irwin's grantees as possible ; though when the election commenced, and he was sworn poll-clerk, he handed to the returning-officers a roll containing the names of those tenants who were admitted, in order to guide their judgment in the admission of votes on the poll. Mr. Douglas, who attended as counsel for the petitioners, read the Journals of 1715 to the returning-officers, and explained the consequences of wilfully disobeying the last resolutions : but they chose to disregard his admonition, and to follow the roll implicitly. The petitioners finding all remonstrances vain, and that the proposition of their counsel to make a double return was not listened to, contented themselves with tendering 42 votes, which were rejected. He proposed now to add these to the number admitted for them, and to strike off 19 or 20 from the poll of their adversaries. In discussing the legality of these votes, he should frequently refer to a survey of the borough, taken in 1611, which exists on a roll of parchment, and which fell accidentally into the hands of Mr. Wallis the Solicitor, among deeds relating to a
neigh-

neighbouring manor. The rumour of this discovery soon reached the Duke of Norfolk, who brought an action of *Trover* for the roll, before Lord Loughborough; when Mr. Wallis's counsel stating, that he was unwilling to keep from the noble Duke an instrument which related to his estate, provided the Judge thought that it ought to be given up; the survey was handed to his Lordship, who was of opinion that it ought to be delivered to the Duke. This survey appears to be made by a jury of 17 burgessees and one of the bailiffs, summoned by virtue of a warrant from Thomas Earl of Arundel and Surrey *the very true Lord paramount of the borough*, and sworn to do their duty in the articles specified. They present the state of the burgages in the borough, beginning with the street called the *Scarfolkes*, and proceeding through the *East* and *South* Streets to the *North* Street. It appears by their presentment, that at that time some persons held an accumulation of 5 or 6 burgages at as many shillings rent; while, on the other hand, some burgages were subdivided into parts, for which proportionable rents of eight-pence, six-pence, four-pence, three-pence, and even two-pence, are paid (*a*). He should be able to shew that
many

(*a*) A translation of so much of the survey as relates to the presentments of burgages, is given at the end of the case;

many of his voters had the very burgages described in that roll; and though in the possessions of others a variance was observable, if that proceeded from a subdivision of the property previous to 1696, when the Splitting Act, as it is called, passed, and no evidence of the burgage having existed in a different shape could be produced, such subdivisions would be allowed to carry votes. Upon this ground, he trusted, his clients would establish a majority of votes, whether the Committee should decide that admission in the Lord's court was necessary or not; the titles of the voters having accrued since the last preceding Michaelmas, and there having been time enough for the steward to have admitted them before the poll began; but he hoped the Committee would be of opinion that the resolution of 1715 was couched in terms too plain to be misunderstood, and that it would be unnecessary for them to call upon the counsel to deliver in statements of the right of election.

Mr. Partridge having finished, the Committee deliberated, and acquainted the counsel by their chairman, *That in this state of the case, they re-*

case: it also enumerates the courts holden by the Lord and the corporation, states the reliefs due to the Lord upon death or alienation, and traces the boundary of the borough.

quired

quired that the counsel for the sitting members should state whether they can raise such a doubt respecting the determination of the House upon the right of election being a last determination within the meaning of the act of parliament, as will enable the Committee to call upon the parties to deliver in statements of the rights of election for which they respectively contend. Upon this,

MR. SERJEANT BOND,

For the sitting members, said, That the proposition he meant to contend for flowed from an explanatory construction of the last determination of the right, drawn from evidence which he had to produce of so conclusive a nature, that if he might use the expression, it ought to attain a jury who should bring in their verdict in contradiction to it. In construing that determination, he apprehended he was only bound to look at the words of the resolution which contained it, and was not to wander into a supposition of what the House might have decided, when what they *did* decide was perfectly clear, and left him at liberty to contend that no person could have a right to vote as a corporator of the borough of Horsham, except he had as complete an investiture of that right as would be necessary to defend his franchise, if it were impeached by a process of *quo warranto*. The resolution,

solution, he thought, could only with propriety be explained by itself, and he therefore entered the protest of his clients against any enquiry into the circumstances that attended the passing of it; but if this Committee should think that it was to be explained by the evidence given to the Committee in 1715, he was very ready to maintain that no certainty of the decision of the proposition which his adversaries contended for, could be gleaned from any part of the report of that Committee. The dispute between the parties, if it were the same as now, is inaccurately stated; for the report says, That the fitting members counsel insisted that the burgage tenants must be presented by the jury,—as if that was all that was necessary; whereas the presentment is not the most material circumstance, but the subsequent admission by the Lord. The petitioners then only call one witness, whose name is Wickers: his evidence does not deserve much attention, for, on his cross-examination, he declares that the voters were always called over by the Burgage Roll, which is a very material *fact*, though he is pleased to add, that in his opinion the roll was not necessary. On the other side, many persons of the neighbourhood give a contrary opinion. He did not wish to rest on the *opinion* of either set of witnesses, because it was a fair presumption to suppose that the Committee decided

decided according to the facts in evidence, and it was an uncontroverted fact, that all prior elections had been conducted in conformity to the Bur-gage Roll. It appears that the Committee then heard evidence touching the 15 votes which the petitioners wished to put on the poll: But as it was proved that the rejection of the votes by the homage was arbitrary and unjust, it was but fair, both in the Committee and the House, not to allow that refusal to prejudice them, but to consider them as in fact admitted. The learned Serjeant observed, That in a suit at law, where the pleadings bring the point in dispute between the parties to an issue, we can contemplate the record with all the pleasure which arises from certainty in the object of our enquiries; but that is not the case with the proceedings of the House at so early a period as the commencement of the present century, when the tide of party-zeal ran high, and was indeed in some degree justifiable, where the motive was to secure the title of the present Royal Family to the throne, especially as a determination of the House did not then bear so much on the future right of election as it does at present. He hoped that this consideration would induce the Committee to allow him to explain the resolution of that date, by the constant usage of the borough both before and since, which would enable him to prove beyond a doubt,

doubt, that no burgage tenant had ever voted who had not been presented by the homage, and received from the Lord the recognition of his tenure. This opinion of the law of the borough is corroborated by the best parliamentary writers, as Carew and Bohun (a). Before the presentment, the tenant may indeed maintain an action of trespass, oust a wrong doer, transfer his property, and exercise other rights of

(a) The whole passage from Bohun, as quoted by Carew, is as follows : " The borough of Horsham is held of the Duke of Norfolk as Lord thereof. The house or land that pays twelve pence a year to the Duke is called a whole burgessship ; but these tenancies have been splitted into such small parts, that he who has only so much land or part of a house as pays two-pence a year, is now by custom intitled to vote for members to serve in parliament. But it is the tenant of the freehold, though not resident in the place or occupier of the house or land, that has the right to vote.

" *Note.* Two bailiffs are chosen annually at Michaelmas in the court leet, held by the Duke's steward there, and they are the principal officers that return the members to serve in parliament ; and all alienations or alterations of tenure must be presented at the said court leet ; for tho' at other places in that county, as at Midhurst held of the Viscount Montague, and East Grinstead held of the Lord Dorset, they are admitted to vote from their deeds and evidences they produce at the election ; yet here, none are admitted to poll but those whose right to be a burgess is found by the homage ; nor will they admit tenants *pur auter vie* to be freeholders, or to have a vote in electing members to parliament for the said borough."

Bohun's Par. Deb. Tit. Horsham.

dominion over it ; but as the land is holden by the render of a certain rent to be apportioned on every subdivision of the property, the Lord has a vested interest in every transfer of the land, which the best writers agree, nothing but his own act or negligence can destroy. Accordingly, in the case of Taylor on the demise of Atkins versus Horde (*a*), Lord Mansfield is clearly of opinion, that, on feudal notions, a particular tenant could only alien the fee *by solemn feoffment, with the concurrence of the Lord of whom the fee is held.*—The Serjeant concluded, by pressing upon the Committee the difficulty which the returning officer would labour under in a borough like this, where, in the opinion of all parties a portion of a burgage would give the right to vote, provided the rent were certain, if the homage, who had better opportunities of ascertaining the reality of the transaction, were not allowed to have a previous investigation of the title.

Mr. GRAHAM,

On the same side, said, That the question seemed to him to be, Whether, taking the words of the resolution as they had been read, it was competent to the Committee to adopt any other sense than what those words seemed naturally to

(*a*) 1 Burr. p. 109. This case was a second time argued under the name of Doe and Horde. *Vid. Cowp.*

import? because the proposition he contended for was certainly this: That the resolution being ambiguous, it ought to be construed according to the law of the place. He was very willing to admit that the resolution was in contemplation of law incorporated with the act of parliament making such resolutions conclusive of the rights of election, and that no evidence ought to be listened to which should tend to contradict it. But the answer he had to this objection, if it were made to him, was, That his construction by no means contradicted the resolution, but on the contrary reconciled it to the usage of the place; whereas the construction of his adversaries in reality did contradict it, because such a construction was diametrically opposite to the constant uniform law of the borough, which must be presumed to have been founded upon the true sense of the determination. Whatever therefore might be the opinion of the Committee on the ancient law of this tenure, which according to feudal notions would certainly prove on this side of the question, they could not avoid seeing that burgage tenants, who undoubtedly have the right, may be of different descriptions; some having only inchoate rights by descent or purchase, others complete rights by presentment and investiture; and this ambiguity would justify a farther enquiry into the meaning of the resolution, which the Committee would the more willingly admit,

admit, as these ancient determinations of the rights of election were in general too inaccurate to be construed strictly as acts of parliament. There are many instances where similar explanations were allowed to be put on last resolutions of the House. In the case of *New Radnor* (a), the resolution of 1690 gives the right to the *burgesses* of Radnor, Ryader, &c. On the one hand, it was contended that the word *Burgesses* meant all *burgesses*, whether resident or not: on the other, that it was confined to *burgesses* inhabitants: and *the Committee were of opinion, that they were not precluded from such explanation by the standing order of 1735*. In the case of *Clithero*, in 1661, the House resolved, “that according to the judgment in the last assembly, such freeholders only “as had estates for life or in fee, had the right of “election.” So that here a reference to something else is necessary, which alone can shew that the word *Freeholders* is, by the law of the place, restrained to *burgage tenants*. In *Taunton* (c), the resolution is, that the right “is in the inhabitants “within the said borough being potwallers, and “not receiving alms or charity.” The word *inhabitants* is general; yet the counsel were allowed to restrain its meaning to persons legally settled in the borough (d). In *Dorchester* the

(a) 1 Doug. 318. (b) 8 Journ. 357. (c) 1 Doug.

(d) This was by agreement. A similar agreement took place in the case of *Cirencester*, decided in the present session.

resolution giving the right to "such persons" "as pay to church and poor, in respect of their" "real estates," a great deal of evidence was admitted to prove who these ought to be; and in Ludgershall, though it was said that the resolution was apparently most clear giving the right to "the freeholders or leaseholders of the said borough, determinable upon life or lives," and thereby meaning all freeholders or leaseholders; yet when it was argued that these words might admit of a doubt, the Committee allowed evidence to restrain the right to the owners of ancient houses, or the scites of ancient houses. He only therefore claimed an indulgence similar to what has been frequently granted, of explaining by evidence, words which are in themselves ambiguous. The words *all such persons* as have an *estate*, &c. if taken literally, would extend the right to women, minors, infidels, aliens, and persons guilty of bribery. The law of the land in these cases must be resorted to: but upon that principle the law of the place is the law of the land: and accordingly, if this had been a Kentish borough, the law of Gavelkind would have been consulted; or had the tenure been borough English, proof of that custom would have been admitted on a question of descent. He denied that any thing could be gathered from the context of the report to negative

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tive the proposition he contended for. Had the Committee explicitly decided that admission was not necessary, it would have been unnecessary for the counsel of the petitioners to supply the want of that circumstance by proving that the steward was the creature of the Lord, that the homage was packed, and that all had been done that could be done to procure admission. All they had to do was to produce nine leases and releases, whereas they go on to prove *that the nine voters had been tendered to the homage, and had been refused*. In the name of common sense, why this, if admission was not necessary? The only circumstance that can be tortured into an argument for the other side, is the foolish conduct of the counsel for the sitting members, who attempted to put on the poll the votes of four persons who had titles, but do not appear to have been presented or admitted. But in explanation of this conduct it may be observed, that if the nine votes were decided against them by the House, their game was up; and they therefore, in all probability brought forward these four votes as a forlorn hope, perhaps misunderstanding the resolution of the Committee, or doubting whether the House would agree to it, or willing to hazard a construction of it which in the confusion of a subsequent discussion might prove favourable to their clients. To their conduct he begged leave

to oppose the conduct of the counsel for the petitioners, who must be taken to have understood the right better, as their efforts were successful.

If the present petitioners could make out a case equally strong with that in 1715, and could shew that due diligence had been used in carrying on the *mandamus* which had been applied for, their arguments would be irresistible. But it was fair to ask, Why the tenants complained of being kept off the roll, if they thought it was unnecessary to admit them on it? It is too romantic to suppose that they merely wanted to pay their fees, and throw themselves at the feet of the very true Lord paramount of the borough. Upon some or all of these grounds, he trusted that the evidence which he had to produce of the actual exercise of the right of voting, would be admitted by the Committee.

The counsel for the sitting members having finished,

Mr. PARTRIDGE,

On behalf of the petitioners, said, He conceived the resolution to be so perspicuous and plain, that his friends on the other side ought not to be allowed to adduce any evidence tending to give it a different construction from what it naturally bore upon its face. He observed that the words of the resolution give the right to *all* those who have a
certain

certain interest in burgage land : an expression which he thought the Committee would not have used, except they had meant to negative some other qualification which was contended for. That, in point of fact such a proposition was brought forward, that issue was joined upon it, and evidence heard on both sides, was clearly apparent : for though it had been said that the question of admittance, strictly speaking, was not before the Committee, he thought the argument fallacious ; because as the presentment must necessarily by the rules of the court precede the admission, when the Committee declared that the first of these steps was unnecessary, they of course negated the necessity of the second. This point therefore having been decided by the Committee, upon what grounds or whether upon conclusive evidence it was unnecessary for him to argue, it was adopted *unanimously* by the House ; which proved to his conviction that whatever suspicion might attach on some of the resolutions of that date could not be entertained in this instance ; and that the question having then been fairly decided, ought not to be agitated again. Setting aside therefore the opinion of Mr. Carew to which the Committee would not pay much attention if contrary to the resolution, it only remained to enquire, whether any ambiguity arose from the nature of the estate ? For it had been argued, that no per-

sons could have the estates described without presentment and admission. On the first constitution of a feud, the land was granted by the Lord, on what terms he chose to impose. The investiture of the tenant was then necessary to give him a complete and acknowledged right to his possessions; and the grants being generally for life, every new tenant of course received a new investiture. But when afterwards a greater interest than an estate for life was taken, which in the course of time became capable of alienation or descent, the right vested in the heir or alienee not by the investiture given by the Lord, but by the operation of the law or the act of the parties. Copyholders, indeed, are upon another footing: they still hold by the will of the Lord, according to the custom of the manor; and therefore admission by the Lord is still necessary in many instances for the perfection of their right. But tenure in burgage, which is socage, is subject to all the general rules of freehold property; and accordingly it is admitted that the tenant has every other right of possession except that of voting. But why this should be denied him is not quite so clear, when we are told from the highest authority, that it is a real right attached to the land, and exercised in respect of the seisin of it, which is all that now stands in the place of investiture.

vestiture. Arguments had been drawn from the difficulty which would be imposed on the bailiffs, if they were compelled to judge of the right of the voters from the deeds produced at the poll : but that was a hardship which the nature of their office subjected them to in common with other returning officers, particularly those in freehold boroughs, who have no list of the voters to direct them, and are obliged to exercise their judgment according to the evidence before them. The bailiffs in Horsham must be burgessees, and might therefore be supposed competent to judge of a burgage title. As to the decisions of other Committees which had been quoted, they no doubt proceeded upon all the circumstances of those particular cases ; but in the cases of **Dorchester** and **Ludgershall**, the ultimate decisions were adverse to the novel constructions put upon the resolutions. Those cases differed from this, in which, if there was any ambiguity in the resolution, it was completely removed by considering the evidence adduced at the time, and the sense of the parties then acting upon it.

Mr. DOUGLAS,

On the same side, said, That in his opinion there were but three rules of construction which could be adopted in explaining a determination such as that in question : 1st, To take the plain
and

and obvious meaning of the words: 2dly, To advert to their legal import, if they should appear to be used in a technical sense: and 3dly, To call in aid the context if there was any, to determine the meaning of what in itself is ambiguous. In applying these rules to the terms of the resolution, he observed that there were three material expressions used in it, each of which had its weight. It gives the right (1) to *all such persons* (2) *as have* an estate, &c. (3) *in burgage houses or lands*. As to the first part of the sentence, he observed that the expression *all such persons*, was not borrowed from the parties, but flowed from the Committee itself, and was therefore declarative of their opinion; for the agreement of the parties was, that the right was *only in burgage tenants*. If, besides this, as the witnesses for the sitting members said, every burgage tenant was of course admitted to be of the homage, the roll was an excellent guide to the returning officers, because it contained the name of every voter in the borough. But it is remarkable that this circumstance is chiefly proved by the opinions of candidates who are not the best judges of the rights of election,—and of the steward, who was too much interested in the question not to favour the power of the homage-jury. The proof that many voters had presented

sented themselves to the homage and were rejected, he attributed to the necessity of establishing the charge of a corrupt partiality made against Linfield the steward; in consequence of which he was ordered into the custody of the Serjeant at Arms: and though a similar argument was attempted to be drawn from the conduct of his friends on the present occasion, when they applied for a *mandamus* to procure the admission of several of the voters, that application was not made with a view to entitle those persons to vote, but to settle the law of the corporation. The same motive gave rise to the *quo warranto* in the reign of James I; and the measure was expedient and necessary in a borough like this, where the burgessees and bailiffs form a body politic of a singular nature, without admission or the prestation of a corporate oath. As to the ancient feudal investiture, he observed that it was nothing more than the delivery of the estate by the Lord, according to certain legal forms, the most common of which, in this country, was a corporal delivery of part for the whole by enfeoffment and livery of seisin, the deed of feoffment expressing the conditions of the grant. But modern conveyances have superseded the ancient mode of feoffment; and a most complete investiture may now be given by *lease and release*, or rather

rather by a bargain and sale of the freehold for a year, which in law makes the bargainor or tenant of the freehold stand seised to the use of the bargainee, who, by virtue of the statute converting uses into possession, is supposed to be actual seisin or possession of the estate, and therefore capable of receiving a release of the reversionary interest which is granted to him the next day. Neither is a new investiture necessary on a descent of property, for the maxims with us are *sefina facit stipitem*, and *mortuus seisit vivum*. Were the intervention of the Lord necessary, the tenants, till that took place, could not be said to *have* their land. If called upon in a court of justice to produce their title, they must give in evidence the court roll, or a copy of it; and would thus be degraded into copyholders, and denied even the right of voting for county members. But it had been admitted that the land belonged to the tenants for all the purposes of property; if so, may they not be said to *have* their estates in the sense of the resolution? The statute of wills, when it gives the right of devising landed property, gives it to "all and singular person and persons *having* any manors, lands, tenements," &c. and the word occurs in the 8 of Hen. 6. c. 7, which directs that the knights of the shires "shall be chosen by people dwelling

(a) 32 Hen. 8. c. 1.

" and

“ and resident in the same counties whereof
 “ every one of them *shall have* free land or tene-
 “ ment to the value of forty shillings by the year
 “ at least, above all charges.” But would it be
 endured, if a person should *have* forty shillings
 by the year in Horsham, That he should be de-
 nied to vote for the county members, because he
had not that estate, as might be pretended, ac-
 cording to some local custom ? On the contrary,
 he maintained that these instances, in which the
 legislature has used the word *have*, clearly shew,
 That if any person has a freehold estate for every
 beneficial purpose, he *has* it in such a manner
 that he can also vote for it. If the Committee in
 1715 had only decided that the right belonged
 to those who had an estate according to the cus-
 tom of the borough, they would have decided
 nothing at all, but have left the right still to be
 ascertained by reference to usage, or to the books
 of common law : but if those books are to be
 consulted, what answer can be given to the au-
 thorities already quoted, and to Blackstone, who
 says, (a) “ That burgage is only a kind of *town*
 “ *focage*, as common focage by which other lands
 “ are holden is usually of a rural nature.” An
 absurdity would arise from the system contended
 for by his friends on the other side, which must

(a) 2 Com. p. 82.

tend to its destruction ; for if the estates, as they suppose, revert to the Lord, and must be granted out, as it were, by him to his tenants, this would create a species of subinfeudation, upon which the statute of *quia emptores* would attach, and the tenants would in law hold not of the Duke of Norfolk, but of the King as the next superior ; and therefore their estates would not be within their own definition of the right, or within the limits of the borough. As to Carew's work, Mr. Douglas observed that the introductory information was frequently erroneous, the most valuable parts of it being the transcripts of the Journals relating to the different boroughs. He concluded by pressing on the Committee the plain meaning of the resolution, by which it was to be presumed, the House meant to define the right clearly, as such determinations were before that date declared binding upon returning officers, though not upon the House itself or its Committees.

Mr. SERJEANT BOND, in reply,

Said, That in all the variety of matter which had been urged against him, he was not sensible that he had received a direct answer to the principal point on which he had rested his case. The resolution is either ambiguous or not ambiguous, and on either ground there is a necessity

cessity for evidence ; for if it is ambiguous, evidence must be allowed to explain it ; if unambiguous, it then remains to be construed in some of those ways which Mr. Douglas has pointed out ; the most proper of which for a tribunal so enlightened as the present, is to give the words of it their legal import. But the legal construction may be drawn from two sources equally authentic ; from the custom and local laws of the place, as well as from the common law of the land. Though the general rules of property flow from the latter source, the signorial rights can only be ascertained by a reference to the former, which alone in Horsham, a borough by prescription, give the right of voting to bur-
gage tenants. He never meant to place much reliance on the strength of the evidence in 1715 being on his side of the question ; for in reality no evidence was adduced at all but one fact, that the bur-
gage roll had been consulted at elections, which however spoke sufficiently for itself, as the names of those only who were admitted could have appeared upon it. For the petitioners there is only the opinion of Mr. Wickers, which was sharpened by an arrest the day before the poll commenced ; which circumstance, he contended, was the basis of the charge against Linfield, and not the improper rejection of the tenants, seeing the returning officers were not censured. As to the
tender

tender of the four votes neither admitted or refused by the homage, it was easily explained by the natural doubts of the counsel how the House would receive the decision of the Committee, and their anxiety to do every thing in their power, by submitting the case in every possible view to its ultimate decision. It seemed admitted by his friends on the other side, That in the origin of feodal tenures, the complete investiture which he had contended for was necessary. But they had forgotten that this borough was most ancient, that the lords court was immemorially holden on *hode-day*, a festival in commemoration of the expulsion of the Danes, and that there was not any record extant of any one voter having ever exercised his franchise, who had not been previously admitted or improperly refused. They had also forgot all the doctrine of customary freeholds, where alone the proposition for which he argued was to be found. It is the opinion of Lord Mansfield (*a*), that in these and copyholds, traces of the feudal tenures are still perceivable : He did not therefore, as had been alledged, think his case desperate, when he contended for a law in Horsham as ancient as the constitution of parliaments. For though a man might *have* an estate by a seisin in law, which would enable

(*a*) 1 Burr. 108.

him to devise or sell it, or to become a suitor to the sheriff's court and vote for a Coroner or Knight of the Shire, it did not follow that he could become the tenant of a particular manor and vote for the representatives of the borough, without becoming a suitor to the court of the Lord. At a time when wages were paid to the members, they will be found to execute a release of the wages to the Lord's tenants as to the corporation; it follows that the voters must have been of the corporation to have owed the wages, or to have enjoyed the release. Many rights are annexed to customary freeholds which do not extend to freeholds in general. By custom, that may be good which at common law is bad, and that bad which otherwise would be good. He entreated the Committee therefore to look to the custom of the borough as they could find that in this case, the Lord had preserved his rights inviolate amidst the almost general wreck of the feudal system [A].

The Committee resolved, *That the counsel for the sitting members be not permitted to shew by evidence that it is necessary that persons having an estate of inheritance or for life in burgage houses or burgage lands, lying within the borough of Horsham, should be presented to or admitted at the Lord's court, in order to be qualified to give their votes at*

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the

the election of members to serve in parliament for the said borough.

This resolution being communicated to the parties, the counsel for the petitioners proceeded with their

EVIDENCE.

The poll being delivered in, the numbers appeared to be, for

Mr. Shelley	25
Mr. Braddyll	24
Lord William Gordon	20
Mr. Baillie	19

Tendered for each of the petitioners, and rejected	—	42
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In the course of the cause nineteen of the votes for the petitioners were admitted by their counsel to be bad, thirteen were decided by the Committee to be good, and two admitted on the poll, one of which was a cross vote remained unimpeached; which made their numbers ultimately 15 and 14.

Twenty-two of the tenders were abandoned; but a short account of their titles was taken in writing by the poll clerks at the time they were rejected.

The counsel for the sitting members gave up ten of their votes; and the Committee was of opinion that two others were bad; so that their numbers were reduced to thirteen and twelve.

Of

Of these, seven, including the cross vote, remained unimpeached, and two were decided to be good; but it became unnecessary for the Committee to decide on the validity of the other four votes, viz. those conveyed by Sir Henry Fletcher, as at all events the petitioners must have had a majority. Several of the votes for the petitioners also appear to have been left undecided for the same reason.

Some account of the individual votes will be given hereafter; but I shall first notice the general points which occurred in the cause.

The counsel for the sitting members attempted to add to their poll the vote of Mr. *Medwin* who claimed to vote for the whole of the *Red Lion*; but was rejected by the bailiffs because he had only been admitted to part of it. The counsel for the petitioners denied the *tender* of Medwin, and insisted that it ought to be proved before evidence should be received of his title. This was opposed, on the ground that the whole of the voters case ought to be taken together; but the Committee being of opinion that the tender should be proved in the first instance, evidence was given on both sides as to that point^(a). The evidence was

(a) It was observed that the poll did not furnish *prima facie* evidence of the tender; for though Mr. Medwin's name was written in the column of the voters, there was no mark opposite it to shew for whom he voted.

contradictory; but the Committee determined *That it was not proved that Mr. Medwin tendered his vote for the sitting members.*

The survey of the borough in 1611 was delivered in (a); and from the turn which the cause took after the second decision of the Committee hereafter mentioned, it was understood by all parties that every burgage must be referred to some entry on that roll, and proved to exist now, as it was there described.

Mr. *Lee*, who attended on behalf of the petitioners to take minutes of what passed at the election, declared that the forty-two tendered votes were rejected by the bailiffs, though they produced their conveyances, and offered to prove the execution of them. The reason given was, be-

(a) *Vide* Appendix, [B] As to the course the jury took in presenting the burgages in Scarfolkes, see the vote of *Edward Stedman* for the sitting members. In pointing out the difference between this borough and *Downton*, Mr. *Mills*, in summing up for the sitting members, observed, that in *Downton* the earliest pipe roll bore date only about thirty years after the renewal of the right of electing members to parliament; whereas in this borough 300 years had elapsed between the first electing of members and the taking of the survey in 1611; nor was the survey made with a view to elections. He thought therefore the accuracy of it might be questioned, and that it ought not on all occasions to be considered as conclusive; but no steps were taken by either party to impeach its authority.

cause

cause their names were not on a certain roll which contained the names of all who were admitted to their estates at the court baron. The voters whose names were on that roll, were admitted to poll though they did not produce their deeds; the presentment of their titles on the court rolls, from which the burgage roll was taken, being deemed conclusive. The roll was handed to the bailiffs by the steward, who was himself rejected by them, because he was only admitted for a part of the *Red Lion*, having claimed to vote for the whole. Mr. Douglas read the Journals of 1715, pointed out the consequences of a wilful disobedience to the resolution of the House, and recommended a double return. The counsel for the sitting members answered his arguments at length; but of their speeches the witnesses had not taken any notes. One of the bailiffs declared that the roll was a better rule to go by than the last determination. The witnesses being about to state that some of the voters in the interest of the petitioners had offered to prove their titles at the court baron, holden on the morning of the election,

Mr. *Chambre* objected to entering into an inquiry of what passed at the court baron; for as the Committee had decided that it was unnecessary for the voters to be admitted at that court, the proceedings there had nothing to do with the

election, neither was Mr. Medwin's conduct as steward, relevant to the charge of misconduct in the returning officers who were not present at the court baron. Accordingly Mr. *Ellis*, Lady Irvine's steward, had declared when he tendered the rejected votes to the homage, That he desired them to be put on the roll, not for the purposes of the election, because their presentment was not necessary on that account, but in order that they might do their homage and pay their fees.

Mr. *Douglas*, on the other hand, insisted, That as the steward had been appointed poll-clerk by the bailiffs, the presumption was that he advised them to act as they did ; that this evidence was now offered to evince a conspiracy between him and them, and that what was guilt in the one would be proved to be so in the others. But the Chairman acquainted the counsel, *That the Committee thought the evidence objected to was not admissible under the present circumstances.*

Some questions being asked of the witness as to the consideration paid for the grants, the possession of the tenants, and the custody of the deeds, Mr. Partridge noticed the cross examination, and required to know from the counsel for the sitting members, Whether they meant to contend that the borough of Horsham was not a burgage tenure borough? Upon this, Mr. Graham

Graham said, That he did not think this was a pure burgage tenure borough similar to Downton and Clithero, where it was understood that an unity of tenement was necessary to be proved, and where the doctrine of occasionality did not apply to conveyances of the burgages. In this borough, he believed, no person ever thought that an individuality of tenement and rent, from the earliest ages, was necessary to be proved. It bore a greater resemblance to Oakhampton, and was a burgage tenure borough in the common sense of every ancient burgage or *soccage* borough; where the freeholds must be proved to be ancient, and anciently holden of the Lord at a certain rent.

The Committee having directed the room to be cleared, deliberated and resolved, *That it is not competent to the counsel for the sitting members to offer evidence to shew that the right of voting at Horsham is in freehold property; It appearing to the Committee to be contrary to the last resolution of the House of Commons, which declares it to be in burgage house and burgage lands.*

Mr. Ellis described the circumstances attending the election as Mr. Lee had: they will be more fully noticed in Mr. *Chambre's* defence of the returning officers. The witness said, That Mr. Medwin was town clerk as well as steward of the borough; and that, as it was customary

for the town clerk to take the poll, no objection was made at the election to his acting in that capacity. The witnesses on a subsequent day, said, That he had served the office of bailiff three times, and that it was customary for the bailiffs to collect fifty-two shillings, the amount of the burgage rents, and to pay them to the Lord's steward at once.

The counsel for the petitioners then produced several deeds to establish the title of *Whitmore*, the first voter who was rejected. When some of these had been read,

Mr. *Graham* said, He admitted that the property for which *Whitmore* claimed to vote, was of burgage tenure, and that the title was derived down to Lady Irvine; but though he admitted this, he by no means acknowledged the vote to be good. In his apprehension there were two species of burgage tenure, which differed in many respects. The one was burgage tenure at common law, the definition and nature of which is so well explained by Littleton, where the land, by virtue of the statute of *quia emptores*, admits of being split into any number of parts, each of which will carry a vote, provided the Splitting Act does not attach upon it. The other is burgage tenure according to the law of parliament, as declared in *Downton* and a few other boroughs of that kind, where, as it had been decided

cided that the freeholds may be conveyed without any consideration the moment before an election, it was but fair to compensate so great an advantage, by requiring the strictest proof that the tenements had in the earliest ages existed in the very shape which they bear at present. But the burgage tenure at common law is governed by the statute of Westr. 3, above mentioned, which expressly provides *quod de cetero liceat unicuique libero homini terras suas, seu tenementa sua, seu partem inde, ad voluntatem suam vendere*; and by enacting that the feoffee shall hold of the Lord of the fee by the same services as the feoffor formerly held by, makes him equally a tenant in burgage. He would ask therefore which of these two species of burgage tenure was meant by the resolution of 1715? Had Lord Coke read that resolution, he would have thought it perfectly clear, because he only knew burgage as it exists at common law; his astonishment would have been great, when told that there was another kind of burgage tenure, established in some convenient corners, where very different rules prevailed. But since that was the case, the Committee ought not hastily to decide that the tenure here was burgage, of the nature of that in Downton, without allowing his friends to prove that a very different law prevailed in this borough, which would create such an extrinsic ambiguity, as on every

every principle must be removed by extrinsic evidence (a).

Mr. *Mills*, on the same side, said, That it seemed to him, that the Committee instead of calling on *his* friends to distinguish Horsham from other burgage tenure boroughs, in the sense in which they are understood by the petitioners, ought to call on *them* to prove beyond a doubt that the burgage tenure here meant, was that in the parliamentary sense, and not that according to the common law ; because the doctrine of the common law was established long before parliament attempted to explain it. It must be acknowledged that the old writers define tenure in burgage very differently from the sense which the petitioners attribute to it. According to these authors, if a tenement holden by the render of twelve pence, were divided into twelve parts, the rent is just as certain as before ; *nam certum est quod certum reddi potest*. Each part continues to be within the ancient borough, is holden of the Lord by a certain rent, and as indisputably of burgage tenure as if it had always remained an individual tenement. This doctrine rests on the wisest and most politic principles ; for as the

(u) *Ambiguitas verborum latens verificatione suppletur ; nam quod ex facto oritur ambiguum verificatione facti tollitur*. See this rule exemplified in Bacon's Maxims, Reg. 23.

land in the course of time must be divided by descent among females, devises, purchases, &c. the Lord would lose the fruits of his tenure, his rent and services, except it were provided as appears by the second chapter of Littleton on this subject, that the rents shall be apportionable, and that in case a female inherits, the husband in right of his wife shall perform fealty and service. So also it might possibly happen by the descent of all the property among coparceners that the right of voting could not be exercised: an absurdity which would justify him in contending that the right was attached to burgage not *qua* an entire burgage, but to each part as equally burgage. The common law doctrine being therefore so much the more ancient, and the parliamentary doctrine of burgage so dangerous, he thought his friends on the other side ought to establish most clearly the generic principle they contended for, which in his apprehension was only a rule attaching on particular instances, instead of being a general principle and definition laid down by parliament. Sure he was, that in all the several *Downton* cases, the law was argued as peculiarly applicable to that borough. And that the modern idea of this tenure was not entertained by the House at the commencement of the present century, is apparent from the evidence received by the *Westbury*

bury Committee in 1715 (a) and reported to the House. For though the resolution of 1702 gives the right to the tenants of burgage houses; in 1715 the sitting members counsel were allowed to prove by evidence that the right was not only in whole and half, but also in quarter burgages paying one penny rent. In *Horsham* the resolution also gives the right to the tenants of *burgage lands*; but the expression *land* is most indefinite, and can hardly be said to mean a specific quantity of property, especially in a borough where the property has fluctuated much, and been much divided; and therefore differs entirely from *Downton*, where it was proved that since 1448 not a single burgage had been created. Had Mr. Hampden used the generic term *burgage* in the sense now put upon it, he would have defined it more accurately, as he must have known that it would have been construed very differently by every man of plain sense and every professional lawyer. These must say, that in burgage the right of voting ought to follow the transfer of the land, which besides extending the right, would strengthen the corporation of the borough, which by the monopoly of a few persons, or the disposition of the law itself, might otherwise be extinguished. He trusted therefore that as the

(a) 18 Journ. p. 149.

right he contended for was neither impolitic or illegal, but the contrary, he should be allowed to prove that it existed here by the constant usage of the place, the concurring testimony of all parties, and the subsequent conduct of those who in 1715 were successful.

On the other hand,

Mr. *Partridge* acknowledged that the definition of Littleton was accurate, and that all the doctrine which had been quoted from his book applied to *burgage* as freehold property at the common law. But with respect to the right of voting, there still remained to consider the law of parliament, which had always been said to be a law by itself, difficult of attainment, (a) and of which common lawyers were, perhaps, not the best judges. That law had been settled with regard to burgage tenure boroughs, after very frequent and very solemn discussions; and it was now he apprehended most generally understood, that as the act of Will. III. against splitting property, did not apply to that species of freeholds, because by the *law of parliament* burgages could not be split, so neither did the doctrine of occasionality in the transfer of the estates. The last

(a) This is Lord Coke's opinion, 4 Inst. p. 15. 6th edit. where he quotes Fleta, lib. 2. cap. 2. *Ista lex ab omnibus est querenda, a multis ignorata, a paucis cognita.*

resolution

resolution of the Committee had bound his friends on the other side from shewing that the right of voting was in freehold property ; which taken with the determination of the House in 1715, he insisted made Horsham as complete a burgage tenure borough as any other whatever.

Mr. *Douglas*, on the same side, said, That it seemed to him more reasonable to take the words of the resolution as general terms descriptive of the right of voting, as it exists in all burgage tenure boroughs whatever, than as conveying no general or well-known meaning, but requiring farther explanation from the usage of each particular place to which similar expressions may be applied ; for in that case no definite idea would be conveyed by the words *burgage houses or lands*, but they would admit of twenty different constructions in different boroughs. It was natural for the petitioners to rely on the several *Downton* cases, because it was within his recollection that, in the first of them, Mr. Serjeant Davy and Mr. Mansfield contended that the splitting act did not attach on that borough, not because the usage was contrary to the enactment of the statute, but because it was not the intention of the legislature that it should attach on burgage tenure boroughs in general ; for, said they, if that had been the intention of parliament, as burgage tenure was well known

known in the law of parliament, it would have been particularly mentioned. He had been engaged in all the subsequent contested elections from that borough, and from a cause not depending on him, at different times on opposite sides ; but he had always understood that the decisions of the Committees were formed on the general law of the land (of which the law of parliament is a branch) and not on the particular usage of the spot, which on the contrary was adverse to the definition of the tenure, inasmuch as the burgages were frequently found to have been split, either by descent among coparceners, or illegal attempts to multiply votes. Perhaps on this subject the borough of *Clithero* may furnish a stronger example than Downton ; because in the latter there is no resolution of the House. In Clithero, as has been observed, the explanation of the word *freeholders* is referred *to the judgment of the last parliament* ; which judgment is therefore a parliamentary declaration of the nature and rights of burgage property, and shews that in it, the right of voting is, by the law of parliament, confined to a single indivisible tenement : for it was that judgment of the last parliament, and not the usage of the borough, that after a long contest induced the Committee to decide (a) that the

(a) This Case is not reported.

law was in Clithero as it was in Downton. There is not indeed an express resolution on the Journals defining the nature of *burgage*; but neither is there of Scot and Lot, or freehold boroughs; because the House having once declared the nature of the right of voting, supposes it is the practice because it is the duty of each member, to study and understand the law which governs it. He felt no hesitation therefore in acknowledging that the inconveniencies which Mr. Mills had pointed out might exist in this tenure: for, if daughters coparceners chose to insist on their writ of partition, the burgages would necessarily be split, each taking her share and rendering to the lord a proportionable rent. But the right of voting being from its nature indivisible, must necessarily be suspended till those particles were again united; for it is attached to the whole burgage, and cannot be exercised for a part. A right such as that contended for, might by possibility exist in a borough. It was enough to say, that it did not exist here; but it would also have its inconveniencies, as under it even *an inch square* of property would carry a vote; whereas, in Horsham, if the right of voting could not be so much extended as in freehold boroughs, so neither could the number of votes be diminished while the burgages remained distinct and entire.

Mr.

Mr. Graham in reply, said, He did not contend that, upon the present view of the case, it was clear that the right of voting in Horsham was as he had stated it; but merely claimed the liberty of shewing by evidence, that the law in Horsham coincided with the general common-law doctrine of parliament, in which he denied that the term *burgage* was to be understood in that generic unqualified sense which had now been put upon it. The chief objection to his argument seemed to be, that it would destroy all difference between burgage and freehold boroughs; but an essential difference would still exist, inasmuch as after he had established his proposition, he could support no vote, but what was given in respect of property, that was anciently of burgage tenure (which constituted the least part of the borough) and that had not been invariably holden of the lord at a certain rent, though it might not have that other capricious quality of having always existed in the very same shape. The tenures would therefore still remain as distinct as burgage and socage must appear to be, to any one who consults Littleton. Mr. Douglas had indeed insisted, that the doctrine of burgage tenure in its confined sense, was a traditional law of parliament, and as well known as the descent of land to the eldest son by the common law; and he had accounted for the

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silence

silence of the Journals on the subject, upon the principle that many things are not to be found in books, which exist in the mouths of a whole people. But this idea could never be supported by the case of *Downton*, for there was no parliamentary declaration of the right *there*, because there is no resolution of the House upon the right of election, which could only therefore be collected from the evidence of usage, or the admission of the parties. The Committee on that borough separated the abuse which appeared to exist in it, from the original law of the place, and must have been of opinion that the *half and quarter burgages* (a) originated with the original grant of the land, and ought therefore to carry votes as well as those which bore a more complete form; but if that decision was founded, as appeared to him, on the law of the place, it would have been an act of folly in subsequent Committees to apply it to other boroughs, with which it could have no connection. So in *Clithero*, to settle the right it was found necessary to refer to the Journals of an early date; but that reference could only have been made in order to find out the local constitution of that borough, which had certainly nothing to do with Horsham. Such therefore, being the

(a) See the Cases of Downton in Doug. & 1 Lud.

law of these places, and perhaps of ten or twelve other boroughs (in which the decisions of those two Committees were not questioned, because none of the parties imagined the law and usage there to be different) Can those cases conclude *Horsham*, where that right was never heard of, nor ever exercised? The law as it now exists in Downton was not so understood till the decision of the first Committee: no trace of it was to be found on the Journals; it cannot be collected from Lord Holt's judgment, who, though he says the right of voting is attached to burgage land, does not say it is attached to any particular indivisible quantity. As therefore the doctrine he opposed could neither be collected from the law of parliament or the law of the land, he entreated the Committee not to draw a general rule from a few particular cases, and to apply it to others which were governed by very different principles.

The Committee having deliberated, resolved, *That the counsel for the sitting members be not permitted to offer evidence of any local usage in the borough of Horsham of splitting and dividing ancient burgages.*

This being communicated to the counsel, and some conversation arising about the meaning of the resolution, the Committee declared, That they meant to leave it open to the sitting mem-

bers counsel, to shew if they pleased the occasionality of particular votes; for that they were not of opinion with the counsel for the petitioners, that because the ancient burgages could not be split, the conveyances of them could not be occasional; but, that if that question was meant to be agitated, the discussion of it ought to be brought on, as soon as possible. The counsel for the petitioners also wished to bring on the question immediately; but those of the other side declared, that they could not take that step without consulting their clients. After this some questions being asked of the witnesses, by the answers to which it appeared that no consideration had been paid for several of the grants; and that the voters had never had their deeds delivered to them till the day of the election;

Mr. Partridge "claimed to have the question argued, Whether occasionality applies to "burgage tenure or not?" But this being objected to, on the ground that the sitting members had a right to reserve the objection till it was their turn to open their case; both sides were heard, and the following resolution come to: *That the Committee do not think it proper in the present stage of the cause, to call upon the counsel to argue the question of occasionality;* but it was observed, that no more questions of this nature were put by the counsel for the sitting members, which

which would have given the counsel for the petitioners an opportunity of objecting to their relevancy, and bringing the point to an issue.

Mr. Graham, in a subsequent stage of the cause, when he opened the cases of the sitting members votes, said, That a dread of subverting a position very generally received, though not founded on accurate reasoning, together with other considerations peculiar to the case of his clients, had induced him to abandon a ground which he might have taken, and to allow the votes against him to stand or fall according to the legality of their titles, and independently of circumstances of fraud and occasionality in the conveyances. Mr. Mills having also in his summing up touched upon this topic, the Committee intimated, that as that question (which was of great difficulty and importance) had been waived by Mr. Graham, it could not be supposed to weigh at all in the judgment they were about to form.

In the course of deducing the titles of the voters, the counsel for the petitioners, in consequence of a notice to that effect, called on Mr. Medwin the steward of the manor, to produce all the court rolls that were in his possession; and he having admitted that he had no court roll, or minute of the proceedings of a court of an earlier date than 1699, except the roll of

1611, and a rental of 1686, they offered a book, intituled *Burgus et Manerium de Horsham*, 1650—1768, which they said came from the possession of Lady Irvine, and contained among other articles, items from the court rolls during the time that the originals were allowed to be missing.

This evidence was objected to as coming from a person who had not the legal custody of it; but on the contrary had an interest to corrupt the entries of the original rolls. It had not been proved that these originals were lost, if they ever existed; nor could these be taken to be a copy of them, seeing the names of the homage are frequently omitted, and the stile of the court is in many instances inaccurate. It was said therefore to consist of partial extracts from the rolls; and that if the courts were to be presumed regularly kept, there was a chasm in it (which was pointed out) during which time the proceedings of former courts might have been completely rescinded.

But to this it was answered, That the same inaccuracies were frequently to be found in the original minutes of the courts produced by the steward, the court rolls not having been drawn out from them. That these inaccuracies might furnish an objection to particular entries where they were detected, but ought not to be allowed to

to impeach the authority of other entries which were more accurate. That the Committee would presume that courts were held between 1611 and 1699 ; for otherwise the corporation must have been dissolved, as from the course of nature none of those who were admitted at the former period could be alive at the latter ; and that it was the interest of the Irvine family to perpetuate the memory of the proceedings at those courts, by taking copies of the rolls or minutes, which this book must be presumed to contain. The Committee were of opinion *that the evidence was admissible.*

The original poll of 1714 was produced, and many original returns, which afforded the parties an opportunity of comparing the names of the voters at the bottom of the returns with the signatures of the various deeds.

Mr. Medwin, as steward of the borough and manor, produced minutes of courts baron held after 1699, which he had found in the evidence-room at Arundel Castle. He had not been able to find any between 1723 and 1738 ; nor did he know who were stewards during that time. He also delivered in a “ rental of 1686 (a),” and a paper, intituled “ A general burgage list

(a) It was observed that this rental increases the amount of the rents to fifty-five shillings and ten-pence ; whereas in 1611 the sum total is exactly fifty-two shillings.

“ taken as to the old names, from an old survey
“ of the borough, and as they now stand this
“ year 1741, and what each paid when that
“ survey was taken ;” and the same was referred
to without opposition.

It was understood that the *descriptions* of the old deeds produced, were referred to and copied into the minutes of the Committee, not in order that a title might be deduced to the present proprietors of the burgages from the owners of them in 1611 (for it is evident from the particular cases that this was not always done, the parties frequently resting upon their possession, which if of any length of time, is evidence of the best title) ; but that the completest proof might be furnished of the identity of the burgages and their contents.

In illustrating this subject, Mr. Mills observed, That five points were generally made the subject of enquiry.

1. The *name* of the burgage, which, if found in all the deeds to be the same, would afford a presumption in favour of the *identity* of the burgage.

2. The *contents*, which are extremely necessary to be considered in this tenure ; because if any part of an aggregate specification were afterwards omitted, that omission, if no satisfactory
account

account were given of it, would undoubtedly destroy the vote.

3. The *boundaries*, which, if all along described in the same manner, will create a strong presumption in favour of the contents.

4. *The rent* ; for though rents may be released or abandoned by the Lord, where that is not the case, if the rent is lessened and the contents are not proved to be the same, the presumption is, that the burgage is not entire.

5. The *situation of the streets*, which the learned counsel observed had been described by a person of great local knowledge (Mr. Hurst) but which it is apprehended will be best understood by the map. He also referred to the five propositions in 3 Luders, p. 210 (a).

(a) 1. In a proper burgage tenure borough, the right to vote is incident to the freehold interest of every burgage.

2. Such right may be suspended, but cannot be extinguished.

3. Every ancient tenement situate within such borough and held by soccage tenure, is a burgage.

4. The characteristics of a burgage are, That the tenant is liable to pay to the Lord of the borough a rent certain, a relief upon descent, and a fine upon alienation.

5. The question, Whether a tenement is or is not a burgage, being a question of prescription, the affirmative may be established by any of the modes of proof by which other prescriptions or customs are proved.

Mr.

Mr. CHAMBRE

Having taken an opportunity, in the middle of the cause, of requesting to be heard in defence of the returning officers, said, That the charge against his clients seemed to be of a double nature, inasmuch as they were accused of having acted with gross injustice by violating the right of election, and of having misconducted themselves in appointing Mr. Medwin to be the poll-clerk ; for as to the charge of partiality he did not perceive that it was supported by any evidence except what went to establish the two former points. As to the latter charge, Mr. Douglas by not mentioning it in his reply, seemed to have acknowledged that it did not weigh much in his judgment. Their predecessors in office had acted in a similar manner ; and it was a matter of little consequence who was poll clerk, provided he were not a man of notoriously bad character, as he is bound by oath to do his duty, and is merely the servant of the returning officers. Accordingly it is in evidence, That no objection was made to the appointment at the election. Passing therefore from this charge, which appeared to him to be too frivolous to be dwelt on, he should say a word or two as to the fact of Mr. Medwin handing them the *burgage roll*. This he thought had been unfairly urged

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as a proof of criminality both in the steward and bailiffs ; for it does not appear that the original minutes of the courts baron were called for by either party, or that any objection was made to the accuracy of the roll. If therefore there was any probable ground for the returning officers to regulate their conduct by the presentments of the homage jury, they could receive the roll (which was drawn up with reference to those presentments) from none other than the steward, who had the legal custody of the records of the borough ; so that *that* circumstance must rest on its own intrinsic merits, which could neither be enhanced or lessened by Mr. Medwin's conduct. The question then is, Did the bailiffs act in a manner so grossly corrupt, so illegally partial, that besides subjecting themselves to the penalties inflicted by the law for making a false return, the Committee were called upon to report their conduct to the House, that they might undergo a greater degree of punishment ? But where the error is merely in judgment, there is no cause for this extraordinary severity. The Committee would reflect that the duty of a returning officer is extremely perilous ; and that by the constitution of many boroughs, it is imposed on persons frequently very ill calculated to decide such matters of importance as come before them. Accordingly, the persons who acted in that capacity in the present instance,

were

were not enabled either from their habits or education (the one a tradesman, the other a farmer) to form a correct judgment of the learned arguments of counsel. It is said, however, that they acted as they did after notice of the consequences, and it is proved that the resolution was read to them: but whatever arguments might be drawn from the language of the last determination, it does not appear that the preceding evidence reported to the House in 1715 was read; and therefore the Committee will consider whether the bare words of that resolution are so explicit of themselves, that without any farther light, their sense must be obvious to every person who reads them. It is indeed to be lamented, that resolutions of the House on the rights of election, which are of so much force, should frequently be expressed with so little accuracy; the only excuse for which is, that the House when it passed them, perhaps meant only to dispose of the seats; and therefore, supposing that the bailiffs did advert to the evidence laid before the House, they might still have meant to act with fairness, because they must have seen that the evidence was contradictory to the sense they were asked to put upon the resolution.—Mr. Chambre here argued from the report of the Committee in 1715, that the returning officers might very honestly conclude that the question of admission was not decided
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by the House, but that the House contented itself with deciding the right to the seats, and mentioning in a general way the right of election. It was more respectful to suppose that the House did not decide that question, than to suppose it was decided contrary to evidence.

But even if they were convinced that the House meant to decide the point, they might urge as their excuse what has been said of the penner of a will, *quod voluit non dixit*. The House has not expressly declared the decision of the question; and the bailiffs might therefore think that they were not bound by the *words* of the resolution, but were at liberty to give scope to the ancient usage of the borough.

It has however been said, that Mr. Douglas spoke so forcibly on the subject, that little excuse is left for their conduct. What the arguments then used by that learned gentleman were, does not appear. All that could be done, therefore, was to suppose that he had argued as well on the hustings as he had in the committee-room, and to see whether those arguments were of so decisive a nature as to convince plain unlettered men. One topic much insisted on by that learned gentleman, was the word *having*: but all he said, in his apprehension, only proved that *to have was to have*, and did not by any means decide the point in litigation, as the bailiffs might be of opinion that no
one

one could be said to *have* a burgage estate in Horsham who was not presented to it and admitted. Supposing even that the feudal law had been quoted, and the whole statute of *quia emptores* read to them, they might have been of opinion that these had nothing to do with the question, as it is known that the customs of particular boroughs may qualify and alter the common law, and may require that a freeholder shall surrender his land to the Lord before he shall be at liberty to alienate it to a stranger. These topics at least would suggest arguments to the ingenuity of the counsel on the other side, which might puzzle unlearned men. When *Craig* was quoted, Lord *Coke* might have been replied ; to whom it was natural to suppose they would pay greater attention. Mr. Douglas was indeed assisted by Mr. Ellis jumping up, as he had himself said ; but on the other hand one counsel was opposed by two, whose arguments were corroborated by the usage of the borough.

It had also been said that whatever doubts the returning officers might have entertained as to the line of conduct they should pursue, must have been dispelled by Mr. Douglas's proposition to make a *double return* : but he thought that their rejection of this proposal was unfairly urged against them as a mark of partiality, because if they had complied with it, the sitting
members

members would have had greater reason to complain. The act of parliament which gives double damages against those who shall make false returns, gives the same remedy against those who shall make false *double returns, and the party or parties that willingly procure the same (a)*. The bailiffs must have been aware of this dilemma, and must have seen from it the necessity of exercising their own judgment. There was some chance that their own determination might be right, but there was a certainty that the proposal made to them would subject them to punishment: they therefore determine that the burgage roll is to be their guide, not imagining, as has been said, that the proceedings at the court baron were of greater authority than the Journals, for that never could have been the question submitted to them; but thinking the admissions of the burgage tenants better evidence of the titles of the voters, because scrutinized

(a) And to the end the law may not be eluded by double returns, be it further enacted, That if any officer shall wilfully, falsely, and maliciously return more persons than are required to be chosen by the writ or precept on which any choice is made, the like remedy (viz. double the damages he shall sustain by reason thereof, together with full costs of suit) may be had against him or them, and the party or parties that willingly procure the same, and every or any of them, by the party aggrieved, at this election. 7 & 8 Will. III. cap. 7. § 3. [C]

with

with greater care by the homage jury, than the deeds which were crowded upon them at the poll, and which they were called upon to judge of without a moment's warning. Mr. Chambre here commented upon the evidence given of what passed at the poll, and insisted that the whole should have been related ; as a full report could alone explain to the Committee the real meaning of the parties. Garbling might extract blasphemy from the scriptures ; and on that account whenever a judicial proceeding is laid before another court of justice, the whole of the record must be produced, that the court may judge by the whole : This had not been done here, as the witnesses for the petitioners, though they expected to appear before the Committee, had no notes of what was said by the counsel on the other side. He did not dwell on the rejection of those voters who had not been admitted to their property, because that was a consequence of the determination to follow the burghage roll ; but he felt a satisfaction in observing that there was no proof whatever of any corrupt motive in the officers, who exercised their judgment, such as it was, with impartiality to both sides. This was demonstrated by the rejection of Mr. Medwin, who was connected with them in politics. They likewise are proved to have heard the arguments of both parties with great patience ;
and

and though it was minuted down with care that, before an argument upon a particular voter was quite finished, his name was entered by the poll-clerk in the book, the circumstance shews that had there been great misconduct on that side, it would have been noted with equal accuracy. In conclusion he observed, that guilt was not to be presumed against any set of men. The internal thoughts of the bailiffs could not be ascertained by the Committee; — from all that appeared, it could only be inferred that they had mistaken the true construction of a very ambiguous resolution, which he hoped would not point them out as objects of peculiar delinquency.

The counsel finished their arguments on Thursday the 8th of March, when the court was cleared; and the Committee having decided on the particular votes as hereafter mentioned, reported to the House on the Saturday following by their Chairman,

That Timothy Shelley, Esq. was not duly elected a burghess to serve in this present parliament for the borough of Horsham in the county Suffex :

That Wilson Braddyll, Esq. was not duly elect-
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ed a burges to serve in this present parliament for the said borough of Horsham :

That Lord William Gordon the petitioner, ought to have been returned a burges to serve in this present parliament for the said borough of Horsham, and that he was duly elected for the same :

That James Baillie, Esq. the petitioner, ought to have been returned a burges for the said borough, and that he was duly elected :

And that neither the petitions nor the opposition to them, appeared to be frivolous or vexatious.

And the said determinations were ordered to be entered in the Journals of the House.

Afterwards it was *ordered*,

That the deputy clerk of the Crown do attend the House forthwith, with the last return for the borough of Horsham, in the county of Suffex, and amend the same by razing out the names of Timothy Shelley and Wilfon Braddyll, Esqrs. and inserting the names of Lord William Gordon and James Baillie, Esq. instead thereof (a).

(a) See the votes of this date.

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The minutes of the Committee bear the following entry ; which was not reported to the House:

“ The Committee came to a further resolution, That Drew Michell and John Rawlinson, the bailiffs and returning officers for the said borough of Horsham, are reprehensible for their conduct at the last election of burgessees to serve in parliament for the said borough.”

Having thus given a general history of the cause, I shall proceed to notice the particular votes, which were discussed before the Committee, nearly in the following order :

PETITIONERS TENDERS.

- | | |
|----------------------|----------------------|
| 1. Nicholas Whitmore | 7. James Holroyd |
| 2. John Lund | 8. Samuel Waller |
| 3. William Joanes | 9. Edward Cotes |
| 4. John Dendy, Jun. | 10. Wm. Troward |
| 5. Hastings Elwin | 11. Philip Humphreys |
| 6. Samuel Toovey | 12. Wm. Rickwood |
| | 13. Abel |

13. Abel Marth
14. Joseph Dennison
15. Edward Luxford
16. John Muzzal
17. Charles Smith, with
Middleton Onflowe
18. John Ireland
19. Samuel Roberts
20. John Cragg

SITTING MEMBERS POLL.

21. Middleton Onflowe
22. Edward Stedman
23. Wm. Lambe
24. John Rawlinson
25. Thomas Griffith
26. James Waller
27. Charles Smith
28. Richard Collins
29. George Phillips
30. Drew Michel
31. Peter Ducane
32. Rev. Wm. Smith
33. John Bachelor, Sen.
34. John Bachelor, Jun.
35. Joseph Borer
36. John Burry
37. Edward Etheridge
38. Tho. Knight
39. Henry Noldret

Unimpeached.

40. John Pilfold

41. Robert Hurst
42. Rev. Tho. Hutch-
inson
43. Tim. Shelley
44. John Smith, of Lad-
Lane

PETITIONERS POLL.

45. Richard Williamfon
46. Alex. Luxford
47. Stringer Shepherd
48. Wm. Joanes
49. Richard Thornton
50. John Dendy
51. John Smith
52. Wm. Scutt
53. Charles Dendy
54. Ralph Joanes
55. John Michel
56. Rich. Howes
57. Wm. Hardes
58. Wm. Ellis
59. Henry Penfold
60. Wm. Jamefon
61. Harry Weller
62. Rich. Grinstead

Unimpeached.

63. Nath. Tredcroft.

64. John Smith, the cross
vote.

1. Nicholas

1. *Nicholas Whitmore* tendered to vote for a burgage, said to be *Parkhurst's*, and since *DANIEL's*. The entry on the roll to which it was referred was the sixth in South-street; and that the *aforsaid Edward Parkhurst and Elizabeth his wife, in right of her the said Elizabeth, hold to them and the heirs of the said Elizabeth, of the Lord aforsaid in free burgage, one messuage with a backside and garden adjoining, being half a burgage, by the rent by the year payable as above, 6d.* The earliest deeds produced were a lease and release of the 29th of March, 1669, by which *Wm. Shorte* grants in fee to *William Daniel, all those two messuages or tenements, mill-house, stable, buildings, garden, backside, lands and hereditaments, with the appurtenances thereto belonging, situate in the South-street, &c. then in the tenure of the said Wm. Shorte, &c. and bounded as follows, viz. to the market place of the borough on the west; to the messuage and lands of Wm. Coe, gent. on the south and east, and to the messuage and backside, late in the tenure of Frances Terry, widow (a) on the north.—To be holden of the Chief Lord of the fee thereof by the rents and services first due, and of right accustomed.* By a long deduction of title these premises were traced to *Richard Hurst*, who in 1783 granted them to *Frances Viscountess Irwin*. This also appeared from the minutes of a Special Court Baron, held in the beginning of 1791; when the homage present that these premises (with nearly the same description as in the deed of 1669) *which are now in the tenure or occupation of Henry Flood, his under-tenants, &c.* were aliened by *Lady Irwin* to the voter for their joint lives; and accordingly *Whitmore* was admitted to the same, paid relief, and did fealty. His vote was decided to be

GOOD.

(a) The Green Dragon.

F 3

2. John

2. *John Lund* tendered to vote for POLLARD'S CROFT, otherwise *Watering-pond Field*, conveyed to him by Lady Irwin, in consideration of 20*l.* and five shillings, under the description of *all that croft or close of land, lying and being in the borough of Horsham, &c. in the street there called Scarfolkes, commonly call'd or known by the name of Pollard's Croft, alias the Watering-pond Field, or by whatsoever other name, &c. now or late in the occupation of Smith, Esq. being burgage lands holden of the Lord of the borough of Horsham, aforesaid, at the yearly rent of one shilling.*

Referred to the 16th article of the roll of 1611 in Scarfolkes; and that the said *Thomas Rowland* likewise holds one croft of land, containing by estimation three acres, with the appurtenances called *Pollard's Croft*, being one intire burgage, by the rent by the year 12*d.*

The petitioners traced the burgage with the same description to *John Rowland*, son of *Thomas*, who signed a return in 1661; and to *Arthur*, son of *John*, who signed in 1689, 95, and 98, by presentments taken from the book entitled "*Burgus et Manerium.*"

At a Court Baron in 1702, *John Waller* was admitted to *Pollard's*, containing about three acres, &c. he having purchased the same for his life only of *Arthur Rowland*, *Waller* signs returns in 1702 and 10, his name was also on the poll of 1714, with a Q prefixed to it.

In 1736, *Arthur Rowland*, son and heir of *Arthur Rowland*, deceased, conveys the premises to *John Middleton*, Esq. trustee for *Charles Eversfield*, Esq. who in 1737 conveyed to *Mr. Dickinson* in trust for the *Irwin* family.

Mr. Ellis said he knew the premises which were out on a long lease to *Sir Thomas Broughton*, at a rent of sixpence, which, as steward to the *Irwin* family, he had received from *Sir Thomas*, about ten years ago; but this on a subsequent day he corrected, by stating that the sixpence rent was received for *Denniscoft*; the rent for *Pollard's Croft* being a pepper-corn. He was then going to prove
Lady

Lady Irwin's seisin of Pollard's Croft, but was prevented by the Committee, Mr. Partridge having before closed his case.

The Counsel for the Sitting Members were about to allow this vote to be good; but retracted that admission, when they understood that Lady Irwin's seisin of the premises had not been proved. Decided to be

GOOD.

3. *William Joanes* tendered to vote for *Constables*, which was said to be COE's, conveyed to him by Lady Irwin for their joint lives, under the description of *all that messuage or tenement, barn, garden, and one acre of land, be the same more or less, situate, &c. in or near the street called East-street, together with the gate, place, yard, or backside thereto belonging; and which said premises were formerly called or known by the name of the Constables, or by whatsoever other name, &c. and were heretofore the estate and inheritance of William Coe and Robert Coe, or one of them, and late in the tenure or occupation of Henry Groombridge, &c. being one whole and entire burgage, and held of the Lord of the Borough, at the yearly rent of 15.*

Mr. Ellis described the premises to be about an acre of ground, with three tenements built on it; his clerk had by his direction received rent for them for Lady Irwin, but he had received none himself. *William Joanes*, who occupied part of the premises by the assignment of a lease from one Maffey, said he had once paid his rent to Mr. Ellis's clerk, which was a pepper-corn, if required. This was about a fortnight ago; but he knew nothing of Groombridge, or the other occupiers of the premises.

The deduction of Joanes's title was as follows: Roll of 1611, second entry in East-street. *And that Beatrix Constable likewise holds one messuage or backside, garden and orchard, by estimation one acre, with the appurtenances; being one entire burgage, by the rent by the year 12d.*

From the book entituled, *Burgus et Maner.* &c. a pre-

sentment, 15th of October 1650, that *William Coe, likewise holdeth to him and his heirs of the Lord of the Manor aforesaid, in free burgage, one messuage, backside, garden, orchard, and by estimation one acre of land, with the appurtenances, being one entire burgage by the yearly rent, to be paid as aforesaid, twelve-pence.*

63d. item of the "Rental 1686." *Wm. Coe, gent. holds as aforesaid a messuage, backside and garden, and orchard, by estimation one acre, situate in the East-street, in Horsbarn, being one entire burgage, and payeth therefor yearly one shilling.*

Wm. Coe signs returns in 1661, 79, 84, and 89. Presentment 18th of August, 1697, of the death of William Coe, and the succession of Robert, his eldest son and heir.

In 1697, Robert Coe conveys to John Linfield and his heirs, *all that his messuage or tenement, barn, stable, buildings, garden, orchard, gates, and close or croft of land thereto adjoining or belonging, containing by estimation one acre of land, be it more or less, situate, &c. in the East-street, now in the several tenures or occupations of John Ireland, Sarah Carpenter, widow, and Benjamin Borer, or one of them, their, or one of their assigns, and which was formerly purchased by William Coe, deceased, grandfather of the said Robert Coe, of one Richard Francis, EXCEPT and always reserved out of the present grant unto the said Robert Coe, his heirs and assigns, all the before-mentioned Gates, now in the occupation of the said Benjamin Borer, or his assignee or assignees.—To hold the same to him and his assigns for ever, except as before excepted.* Linfield signs a return in 1700.

In 1702, John Linfield conveys by the same description to Thomas Harvey in fee, *with the same exception*; who on the 14th and 15th January 1714, conveys in a similar manner to Theobald Michel; who on the 24th and 25th of January, reserving a life estate to himself, conveys in a similar manner to Richard Lord Irwin; but afterwards in 1723, he conveys *in fee* to Arthur Lord Irwin, brother and

and heir at law to Richard, the same premises with the same exception, as in the deed of 1697, from Coe to Linfield; and Henry Lord Irwin having succeeded Arthur, conveyed in 1739 the *Gate Place* separately to George White for his life, who at a court held on the 2d of April, 1741, was admitted to the same, and did fealty to the Lord.—The deed from Edward Dickinson, Esq. the trustee in 1766, to Charles Lord Irwin, conveys *the croft by estimation one acre*; AND ALSO, *all that gate place, &c.*

The *Gate Place* was traced as follows: on the 13th of June, 1702, Robert Coe conveys to John Linfield, *all that his GATE PLACE, yards and backside, adjoining and belonging to the messuage or tenement, barn, stable building, garden, orchard, gates, close or croft of land, situate, lying and being in the borough of Horsham aforesaid, in the East-street there,* now in the several tenures or occupations of John Potter, Sarah Carpenter, widow, and the said John Linfield, or one of them, their, or one of their assigns; and which said *Gate Place* and backside was lately rented or used by *Benjamin Borer*, carpenter, for a timber yard.

From this it was argued for the petitioners, that the *Gates* being expressly conveyed in the first deed from Coe to Linfield, before they are excepted, the exception was void in law; and to this point was cited Dyer 264. and Co. Litt. 47. a. The *Gates* therefore passed to Linfield by the first conveyance, and the second conveyance of them was only to make an occasional vote, and was therefore merely colourable and void. But as the same doctrine applies to all the subsequent conveyances which are made in the same form, it follows that the property came to Mr. Dickinson, and from the Irwin family to the voter without any severance. The feisin of Lady Irwin being proved, as to part of the property by the payment of rent, such as it was, is in law a feisin of the whole.

On the other hand, two objections were taken to the vote; 1st, That the entirety of the burgage had been destroyed
by

by the exception of the Gates ; and 2dly, That the property was not what is described in the roll of 1611, as *Beatrix Constable's*. As to the first point, the general doctrine insisted upon by the petitioners, was but faintly denied ; although Shepherd in his *Touchstone*, says, *it is said* such an exception is void ; seeming to intimate a doubt of the universality of the proposition. But it was urged that courts of justice always incline to put a construction upon deeds which shall give effect to every part of them ; and that this construction in the present case might easily be derived from the apparent intentions of the parties contracting, and their subsequent conduct. Linfield, it was said, might have taken the benefit of avoiding the exception ; but he did not do so, but acted according to the intention of the grant ; for after he had conveyed to Harvey all the property he had from Coe, he accepts from Coe a grant of the *Gates*, which if they had been formerly granted to him, could not have continued to belong to Coe. If this be considered as an explicit declaration of Linfield's title, it ought to bind those who claim under him, and therefore the Irwin family can only be said to have what Harvey had, the *Gates* being derived from Linfield, in right of the second conveyance to Mr. Hurst. Accordingly, the Counsel for the Sitting Members proceeded to prove the adverse possession of Mr. Hurst, by Mr. Medwin, who said that he knew these Gates which front the East-street, and lead to a slaughter-house. The whole is now occupied by Philip Chasemore, from whom he had received an arrear of rent for Mr. Hurst (but since the election) and had also, at Chasemore's desire, repaired the premises : the rent is between thirty and forty shillings a year. It was also proved, to identify the spot, that Groombridge had these Gates before Chasemore.

As to the other ground of objection, it was said, that this burgage could not be referred to *Beatrix Constable's*,
which

which was in truth the *Perry place* for which John Rawlinson voted for the Sitting Members (see his vote). This was denied by the counsel for the petitioners; and it was urged by Mr. Partridge in his reply, as to the first objection, that Hurst's deeds ought to have been produced, that the Committee might see whether he claimed rent for the Gates, as tenant in fee, or by some other title. It was also observed, that the receipt of rent after the election, was suspicious. The vote was decided to be

GOOD.

4. *John Dendy jun.* tendered to vote for all that messuage or tenement lately rebuilt with the barn, gardens, &c. called BOURNES, which said premises are situate, &c. in the Scarfolkes; and are burgage lands, held of the borough and manor of Horsham by the ancient yearly rent of one shilling and sixpence, conveyed to him on the 7th and 8th of June 1790 by Lady Irwin for their joint lives.

These premises were referred to the tenth and eleventh entries on the roll, under the title Scarfolkes.

And that the aforesaid Thomas Lyntott likewise holds a certain tenement being a burgage, containing one messuage, one barn, one stable, one garden, and three acres of land, with the appurtenances late BOURNES, by the rent by the year, payable as above, 12d.

And that the aforesaid Thomas Maye likewise holds one piece of a garden late parcel of the said tenement, being a portion of a burgage by the rent by the year, payable as above, 6d.

By a deed to lead the uses of a fine in 1694, Richard King takes an estate in fee of *Bournes* (Mary his wife joining in the conveyance) and signs a return in 1669. In 1684 the return is signed Richard King, sen. and Richard King, gent.; in 1695, Richard King also signs; and also in 1707. In 1710 and 14, Thomas King signs; and in 1721, conveys to Richard Williamson for his life, *all that messuage, garden, and backside called or known by the name of Bournes*. In 1789, by a deed to lead the uses of a recovery, Richard William-

for

son of Horsham, hollow-turner, reciting himself only son and heir at law, and also devisee in tail general, named in the last will and testament of Richard Williamson late of Horsham, aforesaid, hollow-turner, who was a nephew and devisee in tail general of Thomas King late of Horsham aforesaid, hollow-turner, deceased, conveys *all those two messuages or tenements, sometime since repaired, and heretofore one messuage, tenement, barn, gardens, orchards, lands, and premises, with their and every of their appurtenances, commonly called or known by the name of Bournes, &c. which are burgage lands, held of the borough and manor of Horsham aforesaid, by the yearly rent of one shilling and nine-pence* to Richard Troward, to make him tenant to the præcipe; and as to the premises, to the use and behoof of *Lady Viscountess Irwin*, her heirs and assigns for ever. The recovery was afterwards suffered as above.

Mr. Ellis described the premises to consist of three acres besides the house. He remembered them occupied by Williamson *as the owner*, before he sold them to Lady Irwin; but this he collected only from the deeds. He also remembered them in the occupation of Williamson's brother; but he had received no rent for them from the present tenant, Williamson.

Upon these facts it was argued against the vote, that no connection was proved between Mary the wife of Richard King and the original owner of Bournes. Since that period the similarity of name was all that could be relied on. But supposing Thomas King to have had Lintot's estate in 1714, the deduction of title since is extremely imperfect; for he conveys to Williamson merely a life-estate, which must have determined long since, and cannot be enlarged by the recital of a deed in 1780. The wills there recited ought to have been produced. The presumption in favour of the possession of the Williamsons is therefore destroyed by the production of the first conveyance to them; and as the rent mentioned

mentioned in the recovery is one shilling and nine-pence, whereas the original rent was only one shilling and six-pence; the tenements must be supposed to be different, no addition having been proved to be made to Bournes.

But in favour of the vote it was said, That no objection was made to the burgage in 1714, that a variation in the rent was not of itself sufficient to destroy a burgage, if the unity of the possession has remained. A liability to pay the lord's quit-rent is enough; besides, the Committee may presume that some other plot of burgage ground may have been added to what is described in the two entries on the roll, so as to increase the rent three-pence: And the Williamsons being in possession is *prima facie* evidence of the best title. Decided

GOOD.

5. *Hastings Elwin's* vote was brought forward by the petitioners to cut down that of *Drew Michel*, given for the sitting members. He tendered to vote for a burgage tenement paying a rent of three-pence, situate in the Scarfolkes, *heretofore parcel of a messuage or tenement and premises, commonly called or known by the name of BARN HOUSE, &c.* The entry is the fifteenth in that division on the roll; but the rent is there sixpence. The burgage, as appeared by a presentment of the 26th July 1693, read from the book entitled *Burgus & Manerium, &c.* was divided into two parts by Thomas White the elder, who conveyed the south part to John Hargrave in fee; and the other to his son Thomas White, each of them paying three-pence. This also appeared by a marginal note in Mr. Dickinson's hand-writing. Hargrave signs returns in 1702, 5, and 13. and soon after conveys his part to Arthur Ingram, Esq. who in 1736 conveys to Henry Lord Viscount Irwin. Lady Irwin's feisin was proved by the receipt of rent. The vote was admitted to be

BAD.

6. Samuel

6. Samuel Toovey claimed to vote for *all that messuage or tenement with the garden and appurtenants thereto belonging, formerly known by the name of the STAR, or by whatsoever name, &c. being in the South-street, &c. which said premises are burgage, &c. by the yearly rent of four-pence*, conveyed to him by Lady Irwin for their joint lives. The entry to which this was referred is the first in South-street; and that *Thomas Shepherd, Gent. and Maria his wife, in right of her the said Maria, hold to them and the heirs of the said Maria, of the said Lord in free burgage, one messuage, one barn, one garden, and one orchard with the appurtenants, being a portion of a burgage by the rent by the year, to be paid at the same feast, four-pence.*

Mr. Ellis said, he had received rent for Lady Irwin. From the book intituled *Burgus & Manerium, &c.* two entries were read, the first in 1650, That *Nicholas Shepherd* holds the same premises that are described in the roll of 1611; and the second in 1678, That *John Rowland* holds the same, called *the Star*, and lately purchased from *Nich. Shepherd*.

The identity of the premises was ascertained by mesne conveyances which brought them to the Irwin family; only in the conveyance of 1734 from Mr. Eversfield to the Hon. Arthur Ingram, the word *brewhouse* is substituted in place of *barn*, and Mr. Ellis in describing the premises said, they consisted of a house and other buildings, a brewhouse and garden; and that there was an orchard adjoining, which he remembered part of the Talbot. This furnished the counsel for the sitting members with an objection to the entirety of the burgage; for they denied that the word *appurtenances* in the deed to the voter would convey a barn and orchard; and it was not to be presumed that the trees in the latter were grubbed up, as that would constitute waste by tending to destroy the evidence of the identity of the land. But, on the other hand, it was insisted that the general name of the *Star* was a sufficient description to pass all the

the premises ; and that it was but a fair presumption, that in the lapse of time the trees might be cut down or decay, especially as no account is given of the severance of the orchard, that any person is entitled to the separate occupation of it, or that it exists at all. Decided to be

GOOD.

7. James Holroyd tendered to vote for *all that croft and piece or parcel of garden ground, commonly called, &c. PATCHINGS, in or near the East-street, in the occupation of John Taylor.* Mr. Ellis described the premises voted for to lie between Gilham's and Hollandscroft, and to consist of about *a quarter of an acre.* The 9th entry on the roll in East-street to which it was referred, does not say what it consists of ; but a conveyance in 1713, from John Bridger to Richard Vincent, describes what was *formerly Patchings* to contain *by estimation two acres, be the same more or less, being half a burgage, by the yearly rent of sixpence.* Vincent is presented at the next court, and signs returns in 1713 and 14. There was a question about his title in 1715, but next year he conveys to John Middleton the same premises ; and in 1737 John Middleton and Charles Eversfield convey to Henry Lord Irwin along with other premises (in all five burgages and a half) *two crofts and one garden called Eliots and Patchings, containing by estimation four acres of land, more or less, lying and being near the said tenement called Gilham's.* The variance between the description of Mr. Ellis and of the deeds being insisted upon, the vote was in the reply admitted to be

BAD.

8. Samuel Waller tendered to vote for *all those several messuages or tenements, backfides, barns, and buildings, formerly part of the Wonder, or Talbot Inn, late in the occupation of Edward Dubbins, and others.* Admitted to be

BAD.

* F

9. Edward

9. *Edward Cotes* also tendered for part of the Talbot; and his vote was also admitted to be BAD.

10. *William Troward* tendered to vote for all that messuage or tenement, barn, buildings, garden, orchard, backside with the appurtenances, situate, &c. in the Scarfolkes, near to the waste ground there, commonly called the Green, and bounded as follows: towards the old gaol on the east part thereof; and the tenement or backside, commonly called the New Gaol, on the west part thereof.

Mr. Ellis said, he has heard the premises (which are Lady Irwin's) called *Snelling's Moore*. There is another Snellings, called *Waterton Snellings*. The late gaol lies between them.

Referred to the twenty-fourth entry under the title Scarfolkes; and that *John Pylfould* likewise holds one messuage and garden, with the appurtenances called *Snellings* (in the map SNELLINGS-PILFOULD) being a portion of a burgage by the rent by the year, at the same feast, 4d.

In 1676 James Pilfould covenants to stand seised of these premises to himself for life, remainder to his wife, remainder to his heirs in special tail, remainder to his heirs whatsoever. He appears to have signed returns in 1678, 9, 80, and 1710; and the estate came by one of his daughters to *Edward Moore*, who signed returns in 1734, 35, and 36; and in 1738 conveyed (with the description of the deed to the voter) to Henry Lord Irwin in fee. Decided to be

GOOD.

11. *Philip Humphreys* tendered to vote for all that messuage or tenement and premises formerly called or known by the names of BALDWYNS AND APSLEYS or by whatever name, &c. as the same is divided from the north part of the said messuage or tenement and premises, &c. in the Scarfolkes.

Referred to the thirteenth and fourteenth entries on the roll, under the title Scarfolkes.

And that John Ravenscroft, gent. likewise holds one messuage and garden with the appurtenances called BALDWYNS, being a
portion

portion of a burgage by the rent by the year payable as above, 3d.

And that the same John Ravenscroft likewise holds one garden, being a portion of a burgage called APSLEY'S, by the rent by the year, payable as above, 3d.

By a deed in 1654, Matthew Jewer and Joan his wife, convey to Michael Woodgate in fee *all that messuage or tenement and garden plot, with the appurtenances in the Scarfolkes, &c. in their own occupation, being the south part of a messuage or tenement and garden which Mistress Isabel Suirs, late of Horsham aforesaid, deceased, mother of the said Joan, bought and purchased of Hall Ravenscroft, and bequeathed to the said Joan, which said granted premises are called by the names of Baldwyn's and Apsley's.* This south part was traced to Abraham Newham in 1690, who signed a return in 1695, and whose name is on the poll of 1714. And in 1720 Abraham Newnham, son and heir of Abraham Newnham, of Horsham, and Sarah his wife, convey the same to the Hon. Charles Ingram, the father of Charles Lord Viscount Irwin.

As to the north part in 1679 (a) William Daniel conveys to John Machell *all that the north end or north part of a messuage or tenement, garden, orchard, and backside, commonly called or known by the name of Baldwyn's and Apsley's; as it is now divided, separated and feued out from the messuage commonly called the south part. EXCEPT and always reserved out of this grant all that piece or parcel of ground, containing in length from east to west 3 rods and 6 feet of assise, and in breadth from north to south 26 feet and 9 inches, parcel of the aforesaid garden and backside, at the north end thereof.*

These deeds conveyed only *parts of a messuage or tenement*, but Ralph Joanes, who was called by the petitioners, said, that about ten years ago there were *two old houses* on Baldwyn's and Apsley's (which lie to the south of Barnhouse) which he was employed to pull down; they were separate tenements, and from their appearance he thought they were built at different times; which indicated as the petitioners argued, that one belonged to each burgage, and

(a) Produced by the Petitioners.

that the houses marked the burgages. They are separate tenements now.

Against the vote the counsel for the sitting members produced a conveyance from William Daniel to William Ansell, dated in 1678, of the part excepted in the deed of 1679, *being the north end of a certain garden or backside belonging to the north part of a tenement call Baldwyn's and Apsley's, which said north part, &c. is a portion of a burgage and payeth yearly, &c. four-pence.* In this deed the rent is apportioned between the parties, each of them being to pay two pence.

They also read three entries from the burgage list, taken in 1741, by which it appeared that the burgage had been split, and that two pence was paid for what was called Baldwyn's and Apsley's; two-pence for Baldwyn's, and two-pence for Apsley's. Before the last deed and entries were read, the counsel for the petitioners insisted that Baldwyn's being to the south of Apsley's, Baldwyn's was distinctly enough conveyed by the description of the *south part of Baldwyn's and Apsley's*; especially as Newnham had voted for it in 1695. But not being able to trace the boundaries of the two burgages, or to account for the division of two rents of three-pence each, mentioned in the roll of 1611, into a rent of *four* pence, and *three* of *two* pence; the vote in the reply was but

SLIGHTLY INSISTED ON.

12. *William Rickwood* tendered to vote for part of the north part of a messuage formerly called Baldwyn's and Apsley's. Admitted to be

BAD.

13. *Abel Marsh* also tendered to vote for part of the north part of Baldwyn's and Apsley's: And his vote was also admitted to be

BAD.

14 and 15, *Joseph Dennison* and *Edward Luxford* tendered

dered to vote for parts of *Holbrook's* in the Scarfolkes. Their votes were admitted to be

BAD.

16. *John Muzzell* tendered to vote for premises called *Marchants*, or *the Bell*, in South-Street, held of the Lord, &c. by the rent of two-pence, formerly the estate of William Woodman, and having a messuage in the occupation of Timothy Shelley, Esq. on the south, and a messuage in the occupation of Lintott, patten-maker, on the north.

This was referred to the last entry but one in South-Street, where *Henry Fecst* is presented as holding half a bur-gage, rent 6d.

By the deeds, &c. produced, it appeared that Richard Hedger had an estate named *Marchants*, and signed several returns between 1669 and 84. In 1714 Robert Hedger (who had also signed returns) conveys *part* of *Marchants*, or *the Bell*, to William Woodman, who signed a return in 1721. Woodman had the whole in 1723, and signed another return in 1727; soon after which he conveyed to Richard Worthington, who conveyed to the Hon. Henry Ingram.

The counsel for the petitioners not being able to prove by the descriptions of this estate, in the several deeds they produced, that it was the same as *Fecst's* on the roll, the vote (notwithstanding that John Muzzel, the father, had voted from 1763 to 1783) was admitted to be

BAD.

N. B. In a paper intituled *Horsbam Court Baron*, 10th July 1702, there was the following entry: "We also present that Robert Hedger is heir at law to Richard Hedger deceased, who was a burges of the said borough, for a certain burgage tenure held of the said borough by the yearly rent of two pence; *but we cannot particularly describe the same*—present in court, admitted and swore fealty." There is also an entry to this effect, in the 18 vol. Journ. p. 174.

As the discussion of the following burgage was much implicated with that claimed by Middleton Onflowe, Esq.

I shall now consider them together.

17. *Charles Smith of Horsham* tendered to vote in right of all that messuage or tenement, with the garden, orchard, and backside thereunto belonging, called by the name of Smallwells (in the map SNELLING'S STONE) lying in the Scarfolkes, being half a burgage, held of the Lord, &c. by the yearly rent of sixpence, which formerly were in the tenure of Philip Holland and Henry Gravelly.

This burgage was traced up to the 23 Hen. VI. Anno 1444, when four persons who are there mentioned, grant by indenture to Richard Smallwell, and Matilda his wife, *unum tenementum cum gardino adjacente cum pertinent' suis in burgo de Horsham, situat' inter tenement' Willi D'ni ex partibus occident' et boreal', et tenement' Walteri Hokkendens ex parte oriental' et regiam aream apud boleplace ex parte australi*; which tenement they lately had by the gift and feoffment of *William Snellinge*. The grant is for the life of the longest liver, remainder in tail to Richard Snellinge son of William, remainder to John Snellinge, his heirs and assigns for ever. In 1586, Henry Snelling conveyed to Richard Heyburn in fee, all that, &c. called *Snellings*, situate between a tenement and land of William Hurst, called *Okendens*, on the parts of the West and North, and the tenement of William Greenfield on the East, and a vacant plot of ground called Bull Place, on the South.

By a deed poll of feoffment with livery of seisin indorsed, in 1606, Robert Stone conveys to his son Henry, *Snellings* as above described, reciting that he had purchased the same from Richard Heyburn.

21. Entry on the roll of 1611, title Scarfolkes. *And that Henry Stone likewise holds to him and his heirs, of the Lord aforesaid,*

one messuage, one garden and backside, late Snellings, being half a burgage by the rent by the year, &c. sixpence.

In 1613, Henry Stone conveys to William Puttock in fee.

And in 1613 Puttock's executors, reciting that he died, seised in fee of two tenements and gardens with the appurtenances called Snellings, sometimes Smallwells, lying, &c. between the tenements and croft of land belonging to John Nye gent. called Grandford's, late Hurst's, on the part of the West and North, William Greenfield's on the East, and Bull Place on the South, and had bequeathed that the same should be sold, &c.; convey the said premises to Ralph Heath, and ALSO in consideration of 10l. all such interest and term of years which they have yet to come as executors of the said will, of and in a certain piece of ground, containing by estimation 39 feet in length and 27 in breadth, which one John Leigh by his indenture, dated the 6th of July, 16 James I. did demise and grant unto the said William Puttock for the term of 41 years.

In 1626, Nicholas, son of Ralph Heath, conveys Snellings, sometimes Smallwells, to Peter Waterton, who by a deed of the 20th August, 1674, appeared to have sold the premises, described as *all that messuage or tenement, garden, and backside, formerly two tenements, commonly called Snellings, sometimes Smallwells,* to John Waterton, who mortgaged them to Peter.

In 1740, William Waterton, heir at law of Thomas Waterton, and the executors of the same Thomas Waterton, reciting his will, convey to Henry Lord Viscount Irwin *all that PART of a messuage or tenement, garden, and backside, together with the vote and other the privileges and appurtenances to the same belonging, being burgage tenure, commonly called or known by the name of the Snellings, sometimes Smallwells, or by whatsoever other name, &c. which was the estate of the said Thomas Waterton at the time of his decease, in the tenure of Philip Holland and Henry Gravelly.*

The name of Thomas Waterton appears on the poll of 1714. From this evidence it was argued by the counsel for the petitioners, that the entire burgage of Smallwells, or

Snellings, had been clearly traced to the Irwin family, and that the piece of ground 59 feet by 27, was something extrinsic and not a burgage; a presumption which they said was corroborated by this circumstance, that the name of *Onslow*, though the family is considerable, does not appear on the poll of 1714. They accounted for the *part* of the tenement conveyed in the last deed, by supposing that the old houses had fallen down, that one was built which extended beyond the limits of the burgage, and that only that part was conveyed to which the vote was annexed.

On the other hand, the counsel for the fitting members denied that the whole of *Snellings* or *Smalkwells* belonged to Lady Irwin, relying on the conveyance in 1740 of *part* of a messuage, &c. *with the vote*, which they said betrayed the understanding of the parties that the whole was not conveyed. Having thus attempted to invalidate the vote of *Charles Smith*, they proceeded to establish that of *Middleton Onslowe*, by proving that his burgage was distinct from *Snellings*. They referred it to the twenty-third entry in *Scarfolkes* (the next but one to that of *Henry Stone*) which describes the holding of *Thomas Patchinge*, and read the two entries and the lease, which here follow, to shew that the *Watertons* had the fee of *Snellings*, and took a lease of *Patchinge's* burgage from the *Onslowe's* in 1699. They also accounted for *Daniel Onslow*, son of *Richard*, not voting in 1714, by proving that he was not then of age.

Roll 1611. *And that THOMAS PATCHINGE likewise holds one curtilage inclosed with pales, late Pennycodes, lying towards the aforesaid burgage of William Greenfield on the east part, and to the tenement of the aforesaid Henry Stone on the south-west and north parts; the same curtilage being a portion of a burgage by the rent by the year, at the same feast, 2d.*

“Burg’ et Maner.” 16 Octr. 1650. *And that Peter Waterton likewise holdeth one messuage, one garden, and backside, late Snellings, being half a burgage, and payeth therefor yearly sixpence.*

“Rental

"Rental 1686." *John Waterton holds, as abovesaid, a messuage called Snellings in Horsham, late Peter Waterton's, being half a burgage, and payeth therefor yearly sixpence.*

Lease, 10th November, 1699. Richard Ownflow of Warnham demises to John Waterton of Horsham, currier, for 1000 years, *all that piece or parcel of land, containing by estimation, in length 50 and 9 feet, and in breadth 20 and 7 feet, with the appurtenances; which said piece or parcel of land is accounted one half burgage (a), being burgage tenure of the borough of Horsham, and paying yearly, by reason thereof, sixpence: and late was inclosed within the backside of Peter Waterton of Horsham aforesaid, and is bounded on the north and west parts by the garden of the said Peter Waterton, and by the now dwelling-house of the said Peter Waterton on the highway on the south, and by certain lands called Ockendens, late the gaol, now in the occupation of Richard Luckins on the east; and which said parcel of land is now in the occupation of the said John Waterton or his assigns; paying to the said Richard Ownflow, his heirs and assigns, at his dwelling-house at Warnham, the yearly rent of one shilling and sixpence.*

In April 1791, Thomas Waterton, in consideration of three guineas, surrendered to Middleton Onflow, only son of Denzil, the lease of the premises described in the last deed.

These facts (excepting the above surrender) were presented by the homage in 1788, and Middleton Onflow, Esq. was thereupon admitted a burgess of the borough.

(a) *One half burgage, &c.*] This is clearly a misrecital of the lease. The Watertons possessing *Snellings* in fee, and *Patchings* by lease (of which Puttock and his executors had a prior term) together with the inconsistent evidence of Thomas Waterton, was the origin of some confusion in investigating these two burgages, which was increased by the lease of 1699, describing *Patchings* as half a burgage, paying sixpence rent (the description of *Snellings*); whereas *Patchings* is described in the survey of 1611 as a portion held by the rent of two-pence. But the boundaries in that lease agreeing so well with those laid down in the survey, seem to ascertain the local situation and identity of this small burgage, and to prove that it was entirely distinct from the *Snellings* which afterwards came to Stone.

Mr. Medwin acknowledged that it did not appear that either Richard or Denzil Onslow were admitted to this burgage.

The counsel for the petitioners denied the seisin of Mr. Onslow of this small burgage ; and to disprove it, called *Thomas Waterton*, who gave a very confused evidence.—He said his father was in possession of it, and paid no rent because it was his own ; but acknowledged afterwards that he had heard Mr. Onslow threaten to distrain if the rent was not paid ; that it was paid, and a receipt given. He himself had never been in possession, but had paid rent for it (which was proved by a receipt dated 1783) because Mr. Onslow promised he should have it from feast to feast. He only claimed this small piece of ground, which at one time he called Snellings, otherwise Smallwells, and at another part of Snellings, although at other times he said it was fenced off and separate from Snellings : He thought he was intitled to it by the lease, which he found amongst his father's papers ; he said, he and his mother were dispossessed of it by arbitrary power, and that it was sold in a clandestine manner by an old lawyer at Guildford. One *Cooper* had been in possession of it about forty years, and under him one *Thornton* : he had not received rent from either. He accompanied Mr. Onslow, about fifteen years ago, to demand rent both of Cooper and Thornton, but they refused to pay any.

It was therefore argued for the petitioners, that the admission of Middleton Onslow, and the payment of rent by Waterton, were contrived merely for election purposes. That Cooper by his refusal to pay rent had an adverse possession, which enabled him to take advantage of the lapse of time ; and that the Downton Committee had decided, That a possession which would bar an ejectment would support a vote. They said the arbitrary power, of which Waterton complained,

complained, was probably the *flaves and knives* of a declaration in ejectment ; so that his title was as bad as his possession.

On the other hand it was argued, that the vote did not depend on the occupation of the property, but on the inheritance of the fee. That Mr. Onslowe had done all he could, by claiming and receiving his rent (small as it was) from the lessee ; as he could not bring an action for the rent against *Cooper*, except the whole term had been assigned to him, which did not appear to be the case. It was also said that a *quo warranto* should have been applied for, as the voter had been admitted into a corporate office.

No express determination of the Committee, as to the vote of *Middleton Onslow*, appears on the minutes ; but many of the members declared, that the adverse possession of *Thornton* and *Cooper* was such as to destroy the vote. I have therefore considered it as bad in the statement of the numbers, page 34.

The vote of *Charles Smith* was decided to be

GOOD.

18. *John Ireland* tendered to vote for all that field, croft, or close of land, being part of certain lands and hereditaments in *Horsham*, called *Grandfords*, *Ockendens*, and *Masceall's Garden*, and called or known by the name of the *Hop Garden*, containing by estimation, three acres, more or less, in the occupation of *Libitter*, now of *Richard Williamfon*.

This was referred to the nineteenth entry on the roll. And that *John Nye, gent.* holds to him and his heirs, &c. a certain tenement, being one entire burgage, containing by estimation four acres of land, with the appurtenances in two crofts called *OCKENDENS*, one having a certain narrow way, being a waine-way (in the Latin *una cum vinella*) leading from the King's highway there into the said croft, by the rent, &c. 12d.

Mr. *Ellis* said he had always remembered a wain-way from these premises, which were called the *Hop Garden*, into the *Scarfolkes*. Several deeds were read to prove the identity of the burgage ; but Mr. *Mills* in summing up for the

the fitting members was stopt, by the Committee observing that besides the variance in the quantity of the land, the wain-way, which was part of the ancient burgage, was not included in the conveyance to the voter. And in the reply the vote was but

FAINTLY INSISTED ON.

19. *Samuel Roberts* tendered to vote for a piece of ground, being an orchard adjoining to the dwelling-house, formerly of *Henry Hill*, in *East-Street*, &c. called *Broadbridges*.

This was referred to the fourth entry on the roll, where *Bennet* is stated to hold a messuage, backside, and garden in *East-street*, rent four-pence. By entries in the book, intituled *Burg. et Man.* it appeared that *Matthew White* had this estate, rent four-pence, in 1680 from *William Mill*, who the year before purchased from *Philip Chafemore*. But the conveyance to *Lord Irwin* in 1748, was only of an orchard, being parcel of a messuage, &c. rent two-pence. The vote was

NOT INSISTED ON.

20. *John Cragg* tendered to vote for two acres of land, being an entire burgage, in *North-Street*, in the occupation of *William Ellis*, Esq. late the estate for life of *Geo. Waller*, Esq.

Referred to the fifth entry in *North-Street*, where *Slater* is said to hold the *GEORGE*, late *Bottinge's*. But this entry describing the burgage to be a messuage with barns, &c. and four acres of land, and a deed of feoffment with livery of seisin in 1555, from *Thomas Broadbridge* to *John Botting*, describing it also to contain a messuage, &c. and four acres, the vote was admitted to be

BAD.

SITTING MEMBERS POLL.

21. *Middleton Onslowe* voted for *PATCHINGS*, as described in the twenty-third entry of the roll in *Scarfolkes*. An account of the title is given under the vote of *Charles Smith*.

BAD.

22. *Edward Stedman* had a conveyance from *Sir Henry Fletcher* in 1788, of all that messuage and garden situate in *North-*

North-street, &c. formerly the estate of Richard Lintott, Esq. and now in the occupation of the Revd. Mr. Tredcroft, being one entire burgage, &c. by the rent of one shilling (a); to which description his admission corresponded.

Referred to the last entry in Scarfolkes, and that John Pancras likewise holds one messuage and garden, with the appurtenances, being half a burgage, late parcel of Butler's aforesaid, by the rent by the year, &c. 6d.

Presentment 15th Oct. 1650, that the same John Lintott likewise holdeth one messuage and garden, with the appurtenances, being half a burgage, late parcel of Butler's aforesaid, by the yearly rent of sixpence.

John, Richard, and Henry Lintott appeared to have signed many returns from 1661 to 1749; and it appeared by the "general burgage list" that Henry Lintott had succeeded Richard in half a burgage, called part of Butler's.

Mr. Hurst said, he remembered Mrs. Cheynel, who was his godmother, occupying a house, coach-house, stable, garden, and two fields, about an acre each. The fields adjoin on the north to Brewhouse Mead (which he apprehended to be part of the Gaol Lands); and on the west to part of Mr. Smith's Paddock, which he also considered as part of the Gaol Lands. Mrs. Cheynell's premises were before occupied by Bernard Lintott, who, he had heard, pulled down some houses which stood where Mr. Tredcroft's coach-house and stable now stand. He always understood that these premises were of burgage tenure; and considering their situation and the course the jury took in making their presentments in 1611, concluded they were the burgage described in the roll as belonging to Pancras. He said the jury must have come from the Red Lion at the south end of Scarfolkes, and have proceeded northwards to Barnhouse

(a) This recital of the rent seems to have been taken from the rental of 1686; which it has been observed increases the amount of the rents. See Bachelor senior, vote 33.

on the west side of the street. They then appear to have crossed the road at Beanbridge, and entering Mr. Smith's paddock, to have taken Pollardscroft, or Watering-pond field, and to have returned on the east side of the road to the twenty acres called the Gaol-house and Land; and lastly to have presented the burgage in question.

The same premises were conveyed with a larger description to Bachelor, sen. as appeared on the production of his deeds. Bachelor senior's vote was afterwards abandoned; but the counsel for the petitioners insisted, that the committee, being in possession of his deeds, ought to give them their legal effect; in which case the burgage would appear to be bisected. As the committee seemed to be clearly of this opinion, I have considered the vote of *Stedman* to be
BAD.

23. *William Lamb* voted under a conveyance from Sir Henry Fletcher of all that croft of land lying next to Beanbridge, containing by estimation two acres called STEEDSCROFT, being half a burgage rent, sixpence.

Referred to the seventeenth entry in Scarfolkes; and that *John Lyntott*, the son of *Richard Lyntott* deceased, likewise holds one croft of land next to Beanbridge containing two acres, with the appurtenances, called Steedscroft, being half a burgage, by the rent by the year 6d.

A similar entry was read from the book intituled, "Burgus et Manerium," of the 15th October 1650, which had the following marginal note: "Now in Mr. Wicker's Park."

By original returns, *John Lintott* appeared to have signed in 1661, 78, 79, 80, and 89.

Richard Lintott signed in 1695, 1700, 1702, 7 and 8; and in 1710 conveyed to *Henry Groombridge* all that croft of land with the appurtenances, commonly called or known by the name of Steedscroft, containing by estimation two acres more or less, being burgage-land, held by the yearly rent of sixpence; and now in the possession of *John Wicker*,
Esq.

Esq. and lying near Beanbridge, and bounded as followeth; that is to say, on the west to the Queen's highway, leading from Horsham-borough to the bowling-green; on the south to the lands of John Everfett, Esq.; on the north to lands of Arthur Rowland, Gent.; and on the east to other lands of the said Richard Lintott; the conveyance was by lease and release, the lease only was produced, but it appeared that Groombridge's purchase was presented at a court baron, held 28th Aug. 1710; and he signed a return in 1721, and twice in 1727. On the 4th of Aug. 1710, he conveyed the premises by lease to Richard Lintott for ninety-nine years, determinable on his death, by the same description and boundaries.

By the assignment of a lease in 1751 of Pollardscroft from Sophia Eversfield to John Wicker, it appeared that the lands of John Lintott, afterwards of Barnard Lintott, and since of Henry Lintott, were on the south of Pollardscroft.

From the burgage list of 1741, the two following entries were read: 24 Item, "*Rowlands (a)* — Edward Dickinson, Esq. Pollardscroft, or H. Groombridge, Watering-pond-field." 25th Item, "*Richard Luthin (a)* — H. Lintott, Esq. *Steedscroft half* a burgage—Beanbridge, 6d."

It was admitted that the present Lady Fletcher was the only daughter and heiress of Henry Lintott, Esq.

Mr. Hurst said, he apprehended that the stream which runs under Beanbridge passes through Steedscroft; that it was the next to the bridge and to Pollardscroft; and that Denniscroft lay to the south. He did not pretend to know it by meets and bounds, but had collected his information from the records of the borough. He had also understood from his father, that Rowland's lands lay to the north of Steedscroft. His father rented Deniscroft (which he imagined to contain two acres) of Lord Irwin, at the time that Mr. Wicker occupied the land adjoining. This, his father told him was Lintotts, which he remembered from a circum-

(a) The old name.

stance

stance which he mentioned of cattle breaking from the one inclosure to the other. Decided to be **GOOD.**

24. *John Rawlinson* had a conveyance from *Mr. Hurst* of all those four several messuages or tenements, with the gardens, yards, back-sides, and appurtenances thereunto belonging, lying and being in the North-street, now in the several occupations of *Thomas Jones*, *Elizabeth Terry*, *Edward Clarke*, and *William Potter*, all which said premises were heretofore the estate and inheritance of *Edward Burnell*, deceased; and by him sold and conveyed to *Henry Griffith* of *Horsham*, mercer, deceased, who in his life-time settled the same upon his son, *William Griffith*, as appears in and by the last will and testament of the said *Henry Griffith*, bearing date the 14th March 1746, and were granted and conveyed by the said *William Griffith* and *Henry Griffith* of *Horsham* aforesaid, mercer, unto the said *Robert Hurst* and his heirs, by indentures of lease and release, bearing date 28th and 29th Aug. 1788; and which said premises are burgage tenure, and held of the lord of the said borough of *Horsham*, by the yearly rent of sixpence.

Referred to the holding of *Beatrix Constable* in East-street, which was said by the counsel for the petitioners to be *Coe's*, but by the counsel for the Sitting Members to be **PERRY PLACE**, which was proved to be in the occupation of the persons mentioned in the deed by *Richard Carpenter*. The entry is, *And that Beatrix Constable likewise holds one messuage and backside, garden, and orchard, by estimation one acre, with the appurtenances, being one entire burgage, by the rent by the year, &c. 12d.*

In the book, intituled "*Burgus & Manerium, &c.*" there was the following entry of the 16th Oct. 1650: *And that likewise Lucy Coe holdeth one messuage, garden, backside, and one croft of land, containing one acre, called Perry Place, being an entire burgage, by the rent by the year, to be paid as aforesaid, twelve-pence.*

By a deed of feoffment with livery of seisin indorsed 3d March 1657, *William Coe* of *Clifford's Inn*, conveys to *Wm. Jenden* in fee, in consideration of 80*l.* *All that messuage or tenement, garden, orchard, and close of land thereunto adjoining,*

ing, with the appurtenances, containing in the whole by estimation half an acre, more or less, commonly called Perry Place, situate on the east-side of the street, commonly called the North-street, between the lands of John Michel, Gent. heretofore Robert Tredcrofts, on the north and east; and the lands of Brian Foyce on the south, being reputed a whole burgage of the borough of Horsham, and paying twelve-pence rent by the year.

William Jenden signed returns in 1661 and 69; and by a similar mode of conveyance in 1672, granted the same premises in fee to *Thomas Smith*, describing them as situate between the lands and tenements, late of *Henry Nye, Gent. deceased*, and formerly of *John Michel, Gent.* lying on the north and east. The lands formerly of *Brian Foyce*, and now or late of *Richard Barnard*, lying on the south; and the highway leading from the market-place of Horsham to *Rougheye*, lying on the west.

In 1679, *Thomas Smith*, by lease and release, conveys the same premises by the same description to *Matthew White*, who signed returns in 1679 and 80. No farther account was given of the burgage till 1728, when *Edward Burnell* (whose name appeared on the poll of 1714 as voting for Mr. Charles Eversfield and the Hon. Arthur Ingram) by lease and release, reciting that he had purchased the premises above described of *Robert Gardener* (who signed returns in 1721 and 27) settles the same (in trust) upon *Henry and Elizabeth Griffith*, who was one of his daughters, for their lives, and the life of the survivor; remainder to *William Griffith*, one of their sons, remainder to *Henry Griffith*, his heirs and assigns, for ever.

Henry Griffith signed returns in 173 and 36, and *William Griffith* in 1761; and in 1788 *William Griffith* and his brother *Henry Griffith*, eldest son and heir at law of *Henry Griffith*, convey to *Mr. Hurst* the premises as described in the conveyance from *Mr. Hurst* to the voter, and a fine was levied thereof.

There was an intermediate conveyance from *Mr. Hurst* to *Mr. White* in 1788, who in 1789 re-conveyed.

Mr.

Mr. Medwin proved the execution of the deeds by Mr. Hurst, and the receipt of rent for him; but on a subsequent day the counsel for the petitioners read an entry from the book, "*Burgus & Manerium*," dated the 5th Oct. 1683, *That Matthew White, who held a messuage and garden, with a croft of land, called Perry Place, had aliened the messuage and garden to Robert Gardener who was admitted, and the rent apportioned, sixpence.* This severance not being accounted for, the vote was given up, as

BAD.

25. *Thomas Griffith* voted in right of *all that messuage, with the garden, &c. by estimation one rood of land in the North-street, &c. now in the tenure of William Weller or his under-tenants; all which premises were heretofore the estate and inheritance of Henry Griffith, late of Horsham, mercer, deceased; and after his death, Harry Griffith, his eldest son, was admitted a burgess of the said borough in right thereof, at a court baron held on the 27th June 1747. The same being burgage tenure, and holden of the lord at the rent of sixpence.*

These premises were conveyed to the voter by Robert Hurst, Esq. to whom they were conveyed in 1788, by William Weller. Mr. Ellis said, they lay to the north-east of Perry Place; they were not referred to any entry on the roll for a feoffment with livery of seisin, being proved from William Weller to Mr. Ellis of a slip of ground, forty-four feet by five, occupied together with the other premises by Weller, and now inclosed in Mr. Ellis's garden, the vote was necessarily admitted to be

BAD.

26. *James Waller* voted for part of *Holbrooks*. Admitted to be

BAD.

27. *Charles Smith of London* voted in consequence of his admission to part of the *Wonder, or Talbot Inn*; and his vote was admitted to be

BAD.

28. *Richard*

28. *Richard Collins* also voted for part of the Talbot, and his vote was also admitted to be

BAD.

29. *George Phillips*, had a conveyance dated in May 1790 from Mr. Hurst, of *all that piece or parcel of burgage-ground, being an orchard, situate in the East-street, &c. in the occupation of Henry Cook, heretofore the estate of Samuel White, Gent. being burgage tenure holden of the Lord, &c. by the yearly rent of two-pence.* In consequence of this lease the voter had been admitted at the special court baron, holden on the 17th and 18th of May 1790. *William White's* conveyance to Mr. Hurst in 1789 was produced, and recited, That the above premises were heretofore the estate and inheritance of *Samuel White, Gent. and upon his decease descended and came to Thomas White, his cousin and heir at law, who was the grandfather of William White, father of William White, party to the deed.*

At a court baron, holden 25th Aug. 1788, the homage presented, That it appeared to them from a rental of this borough in the year 1686, that *Samuel White, Gent. held freely to him and his heirs of the Lord of this borough as of the same borough, by fealty, suit of court, relief, and the yearly rent of two-pence, the same premises as above described; whereupon the said William White, being present in court, was admitted a burgess, paid relief, and did homage.* Mr. Medwin, however, acknowledged that he did not recollect that there were other admissions of persons of the name of White in the court-books, prior to the year 1788; and Mr. Ellis said, he had never known any one claim to vote for this burgage, but had never known a contested election. The vote was afterwards admitted to be

BAD.

30. *Drew Michel* voted for the whole of BARNHOUSE, conveyed to him by Mr. Hurst, who in 1789, purchased from *William White*, who took by the will of the Reverend

H

Thomas

Thomas White in 1788, *all that burgage messuage, called Barnhouse, situate in the Scarefolkes, rent sixpence.* But a division of this property having been proved in discussing the vote of Hastings Elwin (see *ante*) the vote was admitted to be

BAD.

31. *Peter Ducane, Esq.* voted for premises conveyed to him in 1773 by Samuel Shuckford, devisee of Timothy Shelley, Esq. said to be ROWLAND WOOD's, since Shepherd's, described by the ninth entry in South-street. Muzzel's property was said to be situated hereabouts; but the deeds being referred to the agents, the vote was afterwards admitted to be

GOOD.

32. *The Reverend William Smith* of Thakeham, voted in right of a conveyance from Mr. Hurst to him in 1788, of *all that messuage, tenement, or inn, known by the sign of the Crown; and also all that little messuage or tenement adjoining the south side thereof, and now laid to and occupied therewith, together with the backside, brewhouse, yards, and other buildings thereto belonging; and also all that stable and loft over the same, called the Upper Stable; and also all that little necessary-house in the yard, adjoining certain premises late in the occupation of William James, and now of John Taylor; and also all that part of the yard in a direct line from the south end of the well which incloses the yard, late in the occupation of William Blake, and now of George Marshall Clerk, to the south end of the said stable, called the Upper Stable; all which said premises are together called the Crown Inn, in the South-street of the borough of Horsham aforesaid, and were late in the several occupations of John Thomas and the widow Stanford, but now of John Wickens; and also, all that messuage or tenement, backside and premises, situate near and adjoining to the said Crown Inn on the south side thereof, and now in the tenure or occupation of the said George Marshall Clerk, his under tenants or assigns; and also all that messuage or tenement, shop, garden, stable, backside, warehouse, and premises, situate in the West-street of the borough of Horsham aforesaid, in the tenure of Mary Somerset and of John Lankam; all*
which

which messuage or tenement are of burgage tenure, being one whole and entire burgage, rent one shilling.

These premises were referred to the last entry on the roll in South-street : *and that ARTHUR WOODGATE likewise holds one messuage with a barn, backside and garden, to the same adjoining, with the appurtenances late Allen's, and formerly Holbrook's, being one entire burgage, by the rent by the year, &c. twelve-pence.* In the book intituled, *Burgus et Manerium*, &c. there was an entry of the 15th Oct. 1650, That John Woodgate, Gent. holds the same premises, *being one entire burgage by the rent, &c. sixpence* ; after which, but in a different hand, there is the following addition, "*Qe. twelve-pence ;*" and in the margin, "*Now Thomas Somerset, the Crown.*"

John Woodgate signs returns in 1661 and 69 ; and in the last mentioned book there is a presentment, 31st July 1668, of the death of John, and the succession of his son and heir of the same name, aged fifteen, with the following entry in the margin, "*Allen, South-street, a whole burgage, now Thomas Somerset.*"

In 1684, John Woodgate conveys in general words, *all those several messuages or tenements, &c. in the occupation of John Underwood and William Burrage, to John Somerset, and Leah his wife, and their heirs and assigns for ever.* And an entry was read from a rental 1686, That John Somerset holds as aforesaid, *a messuage, barn, garden, and yard, situate lying and being in Horsham, formerly Allen's, and since Somerset's father's, being one entire burgage, and payeth therefor yearly, one shilling.*

These premises by deeds, original returns and presentments, were traced to *Mr. Hurst*, for whom Mr. Medwin said, he had received rent. They consist of three messuages, a grocer's shop, stables, a yard, out-houses, and a garden ; and are well known by the name of *Somerset's*. A marginal note to the survey of 1650, says, That Allen's, now Somerset's, is the *Crown*. This vote was decided to be

GOOD.

The counsel for the petitioners objected to the seven next following votes, as given for estates conveyed by Sir Hen. Fletcher, Bart. who derives his title from his wife, who claims under Henry Lintott, Esq. : the whole property conveyed to the several voters appearing to be entered in the roll of 1611, *in one item.*

The entry on the roll to which these burgages were referred, was the last but one in Scarfolkes. *And that John Lyntott, son and heir of Richard Lyntott, deceased, holds to him and his heirs of the Lord aforesaid in free burgage, a certain messuage, with a certain house, called the Gaol-house, with the barns, backside, gardens, and twenty acres of land, with the appurtenances to the same messuage adjoining, called Butler's, sometime the Gaol-house and land, being five burgages and an half, by the rent by the year, at the same feast, five and sixpence.*

The following is the account given of these burgages in the Journals of 1715, p. 174.

“ To add five others to the petitioners poll,
 “ viz. Thomas Hufley, Edward Stanford,
 “ Thomas Swayne, John Hall, and Thomas
 “ Pope, who claimed by titles from Richard
 “ Lintot.”

“ The petitioners counsel produced a copy of
 “ a survey of the manor taken in the year
 “ 1650, whereby John Lintott's holding is
 “ found to be five burgages and an half; and

“ in

“ in 1683 a presentment of Richard Lintott
 “ as heir of his father John, to three mes-
 “ suages and certain lands called Gaol-lands,
 “ rent five and sixpence, and (dated 11th and
 “ 12th Aug. 1713) the several conveyances
 “ for life by lease and release from Richard
 “ Lintott, under which these voters claimed.”

The sitting members counsel observed, “ That
 “ all these conveyances were made the same
 “ day, and objected to them as split votes
 “ and fraudulent; and called Robert Lord,
 “ Edward Tupp, and Mr. John Wicker, jun.
 “ who said they are tenants to Mr. John Lin-
 “ tott, of several parts of these lands, and
 “ do constantly pay their rents to him.”

Richard Lintott himself was objected to, “ that
 “ he had divided his burgages into split
 “ votes; and having no distinct burgage left,
 “ had no vote for himself.”

The decision of the particular votes by the
 Committee or the House is not recorded,
 but the petitioners for whom these votes were
 given, succeeded ultimately.

In the present case, the three first votes hereafter
 mentioned were abandoned in the summing
 up for the Sitting Members; but it was said
 that, these being given up, the evidence of
 Carpenter and Mr. Hurst (noticed in Lamb's
 case) established the boundaries of the other
 four burgages. That burgage or not burgage,

was a question of prescription ; and that evidence of a division of the land forty years ago, if uncontradicted, was enough to raise a presumption in favour of those being the ancient bounds.

Richard Carpenter, who was seventy-three years of age, said, That he was servant to Mr. Wicker, about forty years ago, when the fences of the land belonging to him were pulled down. It measured about twenty acres, and was in five different fields ; they were laid together, and he helped to pull down the inclosures. One piece was called *Great Mead*, and contained about seven acres. There was a three-cornered piece of about one acre, called *Jeremy's Croft* ; another *three-cornered field*, which lay to the south, of about three acres, but the name of it he did not recollect. *Hilly Field* contained about five acres, and *Brew-house Mead* about four. That these five fields belonged to Mr. Lintott, were afterwards in the occupation of Mr. Wicker, and are now in grass, and held by Mr. Smith : that he did not know *Gaol Field* or *House Field*. Carpenter was called as a witness by the petitioners.

William Smith, Esq. said, he occupied all the lands that were in the possession of Mr. Wicker ; but that he had found it impracticable to trace accurately the divisions of the several

several burgages. He paid rent for five fields to Sir Henry Fletcher. The counsel for the petitioners denied that the boundaries were sufficiently proved; but it was unnecessary for the Committee to decide upon these votes as has already been stated, the majority being at all events with the petitioners. The land conveyed to (a) *Ralph Joans* was also said by the counsel for the petitioners to be interspersed among these burgages.

33. *John Batchelor, sen.* voted in right of a conveyance from Sir Henry Fletcher of *all that messuage, with a backside and orchard, and croft of land thereunto belonging, called the House Field, containing by estimation two acres, situate, &c. in the North-street, formerly the estate of Richard Lintott, Esq. deceased, great-uncle of Catherine, now lady of the said Sir Henry Fletcher, in the occupation of Henry Tredcroft Clerk, being one entire burgage, and held of the Lord of the said borough, by the yearly rent of one shilling.*

To establish this vote was the following extract from a paper intituled, "Rental 1686."

The said Richard Lintott likewise holds, as abovesaid, a messuage and backside, with an orchard and croft of land thereunto adjoining, containing by estimation two acres, situate, lying, and being in Horsham, being an entire burgage, late his father's, and payeth therefor yearly one shilling. The vote not being clearly connected with the roll of 1611, was afterwards admitted to be

BAD.

34. *John Batchelor, jun.* voted in right of a conveyance from Sir Henry Fletcher to him, of *all that close or field of meadow, or of pasture land, called the Gaol Field, containing one acre and twenty-four perches, situate in the North-street, formerly the estate of Richard Lintott, Esq. being part and parcel of certain lands, called Goulde Lands or Gaol Lands, now in the tenure or occupation of Edward Tredcroft. The same close or field being one entire burgage.* Admitted to be

BAD.

(a) No. 54.

H 4

35. *Joseph*

35. *Joseph Borer* voted in right of a conveyance from Sir Henry Fletcher, of all that parcel of meadow or pasture ground, containing by estimation five acres, more or less, being part of a certain mead, called GREAT MEAD, heretofore inclosed, but now lying open in a certain piece of land, called the Paddock, now in the possession of William Smith, Esq. which said parcel of meadow or pasture ground adjoins on the east, part thereof to certain parcels of ground, called Hilly Field and Brewhouse Mead; and on the west part to a certain croft of land lying next Beanbridge, containing by estimation two acres, formerly part of the said Great Mead, called Steers, otherwise Steele's Croft; and is part of certain lands, called Goulde Lands, or Gaol Lands, formerly the estate of Richard Lintott, Esq. the same being half a burgage, rent sixpence. Admitted to be

BAD.

36. *John Burry* voted for all that parcel of meadow or pasture-ground, called JEREMY'S CROFT, containing one acre, three roods, and eight perches, heretofore inclosed, but now lying open in a certain piece of land called the Paddock in the North-street, now in the possession of William Smith, Esq. which adjoins on the south part thereof to a certain parcel of ground, called Brewhouse Mead; and on the north part thereof to Horsham Common, and is part of certain lands, called Goulde Lands, otherwise Gaol Lands; and was formerly the estate of Richard Lintott, Esq. deceased.

These premises were conveyed in July 1788, by Sir Henry Fletcher to the Rev. Thomas Hutchinson, for their joint lives, who in Sept. 1788 conveyed the same to the voter.

They were referred to the twenty-fifth entry under Scarfolkes, where John Lintott is presented as holding five and a half burgages, of which this was said to be one.

By the rental 1686, it appeared, That Richard Lintott holds as abovesaid, three messuages, and certain lands, called Goulde Lands, situate and being in Horsham, and payeth therefor yearly, five shillings and sixpence.

At a court baron, held the 24th Sept. 1787, the homage consisting of Mr. Hurst, Mr. Ellis, and Mr. Pilfold; at Mr. Wallis's desire (Lady Irwin's agent) presented, That
Lady

Lady Irwin, who held of the Lord, &c. by fealty, suit of court and relief when they shall happen, and the yearly rent of sixpence, *all that croft or close of meadow, situate in the North-street of the borough of Horsham aforesaid, commonly called Jeremy's Mead, containing by estimation, one acre and a half, more or less, heretofore in the occupation of John Wicker, the Younger, Esq. being burgage lands,* had on the 12th of February 1780, conveyed the same to Philip Chasemore, who was accordingly admitted a burges of the said borough.

Mr. Medwin said, That Mr. Ellis, who was present, being interrogated by Mr. Hurst, said, That he was sure the premises belonged to Lady Irwin; and that they lay in Mr. Smith's Paddock.

A *Quo Warranto* was afterwards moved against Chasemore in the 30th of the King, to know by what authority he claimed to be a burges of the borough of Horsham; upon which he disclaimed his title, and divested himself of all his interest in *Jeremy's Mead*.

This evidence was objected to, on the ground that Lady Irwin's act ought not to prejudice others; but it being answered, That in a burgage tenure-borough, acts done by the proprietors of the land are always considered as affecting the rights of those who claim to vote under them, the objection was not pressed. This vote was

LEFT UNDECIDED.

37. *Edward Etheridge* voted in right of a conveyance from *Sir Henry Fletcher*, of *all that parcel of Meadow or pasture ground called the THREE-CORNER FIELD, containing two acres, one rood, and five perches, heretofore closed, but now lying open, upon a certain piece of land called the Paddock, in the borough, &c. in the tenure or occupation of William Smith, Esq. which said parcel of meadow or pasture-ground is part of certain lands called Goulde Lands, or Gaol Lands, and was formerly the estate of Richard Lintott, Esq. the same being one entire burgage, by the rent of one shilling.*

A similar

A similar presentment was made of *John Joanes* to these premises as of Chasemore to Jeremy's Mead, at the same court; and a similar disclaimer delivered to John Rawlinson and Drew Mitchel, the bailiffs of the borough in 1790.

LEFT UNDECIDED.

38. *Thomas Knight* voted under a conveyance from Sir *Henry Fletcher*, of all that parcel of meadow or pasture-ground called BREWHOUSE MEAD, containing four acres and twenty-eight perches heretofore inclosed, but now lying open on a certain piece of land called the Paddock, in the North-street, in the tenure of *William Smith, Esq.* which said parcel of meadow or pasture-ground adjoins on the south part thereof, on the three-corner ground; and is part of certain lands called Goulde Lands, or Gaol Lands; and was formerly the estate of *Richard Lintott, Esq.* the same being one entire burgage, at the rent of one shilling.

LEFT UNDECIDED.

39. *Henry Noldrett* voted under a conveyance from Sir *Henry Fletcher*, of all that parcel of meadow or pasture ground called HILLY FIELD, containing five acres, one rood, and sixteen perches, heretofore inclosed, but now lying open in a certain piece of land, called the Paddock, in the North-street, now in the tenure of *William Smith, Esq.*; which said parcel of meadow or pasture ground adjoins on the east part thereof to certain parcels of ground called *Jeremy's Croft* and *Brewhouse Mead*; and on the north part thereof to *Horsham Common*, and is part of certain lands called *Goulde Lands*, or *Gaol Lands*, and was formerly the estate of *Richard Lintott, Esq.* the same being one entire burgage, rent one shilling.

LEFT UNDECIDED.

The five following votes for the sitting members remained upon the poll unimpeached. They were given in consequence of the admission of the voters to the burgages opposite their names:

40. *John*

- 40. *John Pilfold*—Hadman's.
- 41. *Robert Hurst*—Parkhurst, since Parham's.
- 42. *Rev. Thomas Hutchinson*—Osmer's.
- 43. *Timothy Shelley*—Foreman's and Foyce's.
- 44. *John Smith of Lad Lane*—Coote's, since Nye's.

PETITIONERS POLL *.

45, 46, 47. *Richard Williamson, Alexander Luxford, and Stringer Shepherd* had deeds from Lady Irwin, conveying to each of them *one sixth part, the whole in six equal parts to be divided, of and in all those two fields or closes of land formerly but one field, called or known by the name of Bishop's, afterwards Seal's, and afterwards Blackland's, and now or late ROWLAND'S, containing by estimation eight acres, in East-street, referred to the sixth entry in East-street; and that the aforesaid Thomas Rowland likewise holds one meadow, containing by estimation seven acres, with the appurtenances, formerly the aforesaid Bishop's, and late Seal's aforesaid, being six entire burgages, by the rent by the year, &c. six shillings.* Their votes were admitted to be

BAD.

* I find it necessary to explain here why I have marked several of the votes under this class (viz. Richard Howes, William Joanes, and Ralph Joanes) as *left undecided*, notwithstanding they were admitted on the poll, and no express determination against them appears on the minutes of the Committee. I do not think that *that* is a sufficient reason for considering them as good, partly from the evidence given with respect to several of them, but chiefly from the course which the Committee took in expressly deciding six of the votes admitted on the poll to be good, and passing the others by in silence. The plain inference from this is, That the Committee thought those votes doubtful *at least*, which they did not decide to be good; but if we were to consider all the votes admitted on the poll, and not expressly struck off by the Committee as good, the determinations abovementioned, that votes admitted on the poll were good, must appear unnecessary; and it would follow, that the four votes conveyed by Sir Henry Fletcher were good; whereas it is known that the Committee did not enter into the discussion of them; and no determination appears on the minutes, either for or against them.

48. *William*

48. *William Joanes*, in consideration of 40l. had a conveyance for life from Charles Lord Viscount Irwin, in 1774, of all that croft or close of land, commonly called or known by the name of Holland's Croft, otherwise the Rackfield, or by whatsoever other name, &c. in the occupation of Taylor, situate in or near the East-street, being one whole and entire burgage, &c.

The agent for the petitioners stated, that he had no other title-deeds to support the vote of William Joanes resting on possession for twenty years, which was proved; but he referred the premises to the last entry in East-street, and that the same Edward (Parkhurst) holds one croft of land, containing by estimation two acres, with the appurtenances called Holland's Croft, being one entire burgage, by the rent one shilling: and read the following entry from the rental 1686: *John Corvett, Esq. holds as abovesaid a croft of land, called Holland's Croft, alias CHURCH CROFT, lying in the East-street in Horsham, by estimation two acres, late the lands of Edward Parkhurst, being one entire burgage, and payeth rent therefore yearly, one shilling.*

The counsel for the fitting members insisted that Holland's Croft, which in the rental is called *Church Croft*, as they said, from the circumstance of paying sixteen shillings yearly to the repair of the church, did not belong to the Irwin family, but to other persons; to this purpose they called *Richard Collins*, vestry clerk of the parish of Horsham, who produced an old book, containing an account of rents belonging to the church, and the churchwardens accounts in which they charge themselves with money received and paid. The first article in the book relates to Church Croft, but is without a date. The first dated entry relating to it is of the 14th of April 1611. *Edward Parkhurst for one year's rent of the Church Croft, ending at the Annunciation, sixteen shillings.* Of the same date there was also the following entry: *Item, Received of John Ravenscroft, Gent. for one*

one year's rent of the Church Croft that was left in his hands, sixteen shillings.

None of the accounts are signed, but the Parkhursts appeared to have paid the 16s. till 1682, after which *Mr. Covett* pays the same sum for several years. In 1697 there was the following entry: *Received of Mr. Bridger for a year's rent due from Mr. Sturt's lands, for repairing the clapper at Tunbridge, sixteen shillings*; which sum appeared to have been received several times after, on the same account. The witness added, that his father, who was dead, and had been vestry clerk for twenty years, had told him that the field called Covett's or Churchfield, and which is well known by the name of *part of Sturt's* (for he did not know the names of Holland's Croft, or *Rackfield*) was the first foot-field from Horsham to Chisworth. Of this Mr. Brooke has been the occupier six or seven years.

Mr. Hurst confirmed Collins as to the declaration of his father, that Church Croft was the field through which the path goes from Chisworth to the church; and said, That Sir Charles Eversfield, a short time before his death, had consulted him as counsel, respecting a dispute he had with the church about a demand for the repair of Tunbridge clappers, which he wished to resist. He understood the field he had described, which lies *near* to John Taylor's, to be the field in question.

By a presentment in 1693, they traced Holland's Croft, which was Parkhurst's, to John Covett, Esq.; and from him to his widow, who married Nathaniel Sturt.

George Brooke said, That he occupied the field adjoining to John Taylor's land, and to a lane. That a path goes thro' it to the church; and that he rents it of Mrs. Eversfield and Mr. Markwick.

On the other hand, *Mr. Ellis* said, That he had heard Taylor's Croft called Holland's Croft; and that Church Croft was another name for Elliott's; but he acknowledged
he

he did not know of any certain rent paid for Elliott's to the church. There is a hedge between the land of Taylor and that of Brook ; through the latter a high road leads to the church ; but there is none through the former.

Edmund Moor thought Taylor's was within the borough, and Brooke's not, and that the hedge was the boundary ; but he said, he had never perambulated the bounds ; and gave the same account of the road to the church, going through Brooke's, which he said was formerly a paved causeway.

LEFT UNDECIDED.

49. *Richard Thornton* voted in right of a conveyance from Charles Lord Irwin, of all that messuage or tenement commonly called or known by the name of GILHAM's messuage, which was described as a whole and entire burgage ; but a conveyance in 1737 from John Middleton and Charles Eversfield to Henry Lord Viscount Irwin, describing *Gilham's* as containing by estimation three acres, besides the messuage, it was apparent that the burgage had been split, and the vote was given up as

BAD.

N. B. See the tenders (not brought forward) of John Plumer and Richard Champion.

50. *John Dendy*, sen. voted for the petitioners ; but his deeds being called for, his vote was immediately acknowledged to be

BAD.

51. *John Smith* voted in right of a conveyance in 1754 from Henry Lord Viscount Irwin, of all that piece or parcel of meadow ground lying in the North-street of Horsham, called Perry Place, otherwise White's Fields, containing by estimation four acres, more or less, being one burgage, &c. The counsel for the petitioners, when called on to produce all deeds, &c. relative to this vote, said, That they would not attempt to trace the burgage to the roll of 1611 ; but they
read

read the following entry from the book intituled, *Burgus et Manerium, &c.* of the 5th of October 1683, with an intention to apply it to this burgage, or to destroy the entirety of Rawlinson's, No. 24. *The homage present, That Matthew White, who held a messuage and garden, with a croft of land, called Perry Place, had aliened the said messuage and garden to Robert Gardener, who is admitted, and the rent is apportioned sixpence.*

These premises were traced to the Irwin family from 1727, when *Mary Savage* who was described in a deed of that date to be *niece of Matthew White*, joins in a conveyance of them to *John Wicker*. On the other hand, the counsel for the Sitting Members averred, That this ground, though locally situated within the borough, was in truth held of the manor of *Rougheye*; to prove which, they called Mr. Hurst, steward of the manor, who produced the manor books, and said, that there were to his knowledge freeholds of that manor interspersed among the burgages of the borough of Horsham. He then read presentments of alienations to and receipts of rent from most of the persons whose deeds were produced for the petitioners: the description in these generally was *a parcel of land called the Crofts, or a Croft in the back lane, or in the North-street*. He said he had lately received rent from *Mr. Ellis* as steward of the manor of *Rougheye*, who at first hesitated, but complied with his demand when he saw the books, and Mr. Hurst declared that he was willing to try the question by an amicable distress: he could not however say but that Mr. Ellis might have paid the rent for part of White's Field, which he described as a meadow containing only three acres and a half, lying in a street sometimes called *East*, sometimes *North-street*, adjoining to land, now *Sadler's*, on the south; on the west to the *Back-lane*; and on the north to what has been already described as *Perry Place*. Admitted to be

BAD.

52. *William Scutt* voted in right of a conveyance from *Charles Lord Viscount Irwin* in 1768, of *all that messuage or tenement, barn, garden, and premises, with the appurtenances, commonly called Rye's Garden*, which was referred to the following entry on the roll of 1611, being the seventh in *Scarfolkes*.

And that Henry Patchinge likewise holds one garden, with the appurtenances, LATE BARKER's, being a portion of a burgage, by the rent, &c. two-pence.

In 1642 *Thomas Patchinge* enfeoffed *John Grime* of *all that messuage or tenement and garden, with all and singular the appurtenances lying together, and situate between the garden, sometime Agasse's, and now of Henry Waller, on the part south; the meadow of the said Thomas Patchinge called Randolfe's on the part of the west and north; and the king's highway leading from the market-place of Horsbham towards Warnham on the east part; which premises are called or known by the name of Rye's Garden, and sometimes were of John Rye, &c. excepting always one piece of ground with the appurtenances, being a portion of a burgage, and containing in length from east to west forty-eight feet of assize; and in breadth from the south to the north twenty feet of assize; and bounded to the said garden of the said Henry Waller on the south, to the said meadow on the west, to the residue of the said premises before mentioned to be conveyed, on the north, and the said highway on the east, as the meeting and bounding do shew, &c.*

The premises were conveyed with this exception till 1689, when *Thomas Pearson* (having conveyed them with the exception the year before to *John Edwards*) conveys to the same *Edwards* the excepted part; and in 1727 *Thomas Lee*, stating himself to be devisee of *John Edwards*, conveys to *John Ingram* the whole premises as above described.

There was indeed a variance in the boundary described in a deed of 1673 from that described as above in 1642, the premises being there said to abutt on the garden and backside

side of *Henry Waller*. This gave the counsel for the Sitting Members occasion to argue, that in all probability the piece excepted had been turned into what was called the *backside*. To this the counsel for the petitioners answered, That as the whole of Rye's Garden was conveyed so long ago to the voter, and no account was given by the other side of this piece, the Committee ought to presume that the entirety of the burgage had been restored, as the deed of 1689 seemed to intimate. It was also observed in the summing up for the Sitting Members, That Lady Irwin's seisin had not been proved: to which it was answered, that proof of that fact had not been required; and that there was a presumption in favour of these voters who had been admitted to poll, and whose votes were only to be defended inasmuch as they were attacked; whereas the titles of those whose votes had been rejected, must be established in every point.—
Decided to be

GOOD.

53. *Charles Dendy* appeared to have a conveyance from Lady Irwin, dated 1780, of *all that messuage or tenement, barns, building, &c. and two closes of land, containing by estimation two acres, more or less, situate in the North-street, commonly called the Scarfolkes, and known by the several names of William Best's tenement and Champenny's, formerly the estates of Theobald Michell Clerk, &c. being burgage tenure, and held of the lord of the manor, &c. at the yearly rent of sixpence, and late in the occupation of ——— Shelley, Gent.* No farther evidence was given as to this vote. The counsel for the petitioners acknowledged that they could not find the burgage on the roll of 1611, and the vote was afterwards admitted to be

BAD.

54. *Ralph Joanes* voted in right of a conveyance from Charles Lord Irwin in 1768, of *all that messuage or tenement called the Old Gaol, or the Gaol-house, or by whatsoever other*
I name,

name, &c. together with a certain building called the Outlet, thereunto adjoining; and all the ancient pile of stone-building heretofore used for a common gaol, or ward for prisoners; and all other the premises, &c. abutting east on a certain street called the North-street; west on certain lands heretofore of Richard Penfold; south on a place called the Gaol-green; and north on certain lands late of John Lintott.

This was said to be one of the five and a half burgages of John Lintott, described in 25th entry in Scarfolkes; and the counsel for the petitioners, though they ultimately gave up the vote, insisted that the premises were part of the twenty acres which belonged to Lintott, and being to be deducted from them, left the other burgages in still greater confusion and uncertainty than before; they therefore said, they did not regret the loss of this voter, as he destroyed so many of his enemies in his fall.

The following evidence was adduced as to this burgage, a lease and release 1659, by which Richard Luckins conveys to Nich. Beard and John Blackthem, for a term of years by way of mortgage, *all and every that his messuage or tenement, Gaol or Gaol-house, situate, &c. near unto, or opposite the George Inn or tavern, late of Henry Yates, Esq. deceased, together with a certain building called the Outlet, adjoining thereto; and all and every that antient pile of stone building, formerly used for a common gaol or ward for prisoners; together also with all and every the well, and one garden, one stable; and all that one Gate-house of and belonging to the said messuage, and part of the gates, gate-room and backside; that is to say, from the posts of the said gate-room adjoining to the barn of the said premises; and also abutting and adjoining to or near a certain lane or highway, called the North-street, leading from the market-house of Horsham aforesaid, towards Roughey on the east; to certain lands and tenements, being the lands of Richard Pilfold, on the west; to or near a certain highway, or void place, called the Gaol-green on the south; and to certain lands and tenements of John Lintott, part and parcel of the premises called the Old Gaol on the north, as the several metes and boundaries do more plainly divide them, together with all ways, &c. as they were particularly contained, specified, and confirmed in one pair of indentures*

of

of bargain and sale, bearing date the 25th day of March 1659, between the said parties.

On the 5th of Oct. 1683, the homage presented, That Richard Luckins, who held of the lord, &c. by fealty, &c. and the yearly rent of one shilling, *a messuage and backside called the Old Gaol*, lately died thereof seised; and that Richard Luckins of full age is his next heir; who was accordingly admitted.

Mr. Ellis said, the premises conveyed to the voter went by the name of the Old Gaol, and he understood, but did not know for certain, that the jailor lived there. They are partly in Scarfolkes, and partly in North-street. The counsel for the Sitting Members rested on the defect in tracing the burgage, but denied that (if it was a burgage) it was any part of *Lintott's* holding.

LEFT UNDECIDED.

55. *John Michel* had a conveyance for life, from Charles Lord Viscount Irwin in 1774, of *all that messuage or tenement and garden, together with a certain plot of ground, called or known by the name of the Burgage Plot thereunto belonging; and upon part of which the said messuage stands, formerly part of the tenement called or known by the name of THE RED LION, or Puffsherne, or by whatever other name, &c. situate in the West-street, and now or late in the occupation of William Gilbert, &c. which said premises are a portion of a burgage, and holden of the Lord of the said borough at the yearly rent of two-pence.*

Referred to the fourth entry under the title Scarfolkes; and that *Thomas Pike* likewise holds another adjoining piece, in length twenty-six feet, and in breadth six feet, being a portion of a burgage, by the rent, &c. two-pence. The original Latin is *Quod T. P. fimi-liter tenet aliam inde peciam longitudine, &c.* which being read, some conversation arose as to the propriety of the translation. The Counsel for the Sitting Members observed, That if this holding of *Pike's* had been part of the *Red Lion* (the whole of which they said *Mr. Medwin* had) the

expression of the roll would have been *pecia* or *parcell' prædicti tenementi*, as in the second preceding entry: but Mr. Fonblanque quoted the statute West. 3. the expression of which is, *quod de cetero liceat unicuique libero homini terras suas seu tenementa sua seu partem inde ad voluntatem suam vendere*, and the usual entry in court rolls, *obiit inde sefitus*, to shew that the word *inde* must be construed of it, i. e. of the *Red Lion*.

The counsel for the petitioners then produced a deed of feoffment with livery of seisin indorsed 8 Aug. 1631, by which Martin Pike conveys to John Pike in fee, *all that messuage or tenement and garden-plot thereunto adjoining or belonging, with the appurtenances, now in the occupation of Edward Feelder, situate in the West-street, late parcel of a tenement in the same borough, called or known by the name of the Red Lion, and bounding to the residue of the said tenement called the Red Lion on the north, to the tenement of Edward Pike on the east, to the tenement of Nicholas Sturt on the west, and the highway leading from the market-place of the said borough to Lincroft on the south.*

15 Oct. 1650, John Pike was presented to a portion of a burgage, described as in the roll of 1611: from the book intitled, *Burgus et Manerium*.

The next deed produced was a conveyance by way of settlement, dated 1 March 1675, whereby John Pike, son of John Pike, and Thomas Pike, eldest son and heir of John Pike, convey to Richard Hobbs and Frances his wife, *all that messuage or tenement, garden and backside, lying and being in the street called the West-street, in the borough, &c. now or late in the tenure or occupation of James Baker or his assigns, with all and singular the appurtenances, and was heretofore parcel of a tenement called the Red Lion, and formerly Puffsherne's, and is bounded as followeth; That is to say, to the garden now belonging to the Red Lion on the north, to the king's highway leading from the market-place, &c. to Lincroft on the south, to the messuage or tenement belonging to Richard Wood, and formerly to Richard Sturt, now in the occupation of Richard Groombridge on the west, and to the messuage or tenement now or late of Thomas Cooper, and before Edward Pike's on the east, which said granted premises were heretofore the*
estate

estate of John Pike, deceased; and by his last will and testament devised to the said John Pike, party hereto. Habend' to the grantees and the survivor of them and their issue; and in default of such issue, to the right heirs of the said Richard Hobbs.

Probate of a will of *Lydia Bythewood*, 2d of Aug. 1720, in these words: *I give and bequeath all my messuage or tenement, backside, garden, burgage ground and premises, with the appurtenances, situate, &c. in the West-street, &c. unto my loving husband Samuel Bythewood, for and during the term of his natural life; and after his decease I give and devise the said messuage, &c. (as before) unto the right heirs of me the said Lydia Bythewood.*

Next a deed of 1740, conveying the same premises as last described from the heirs at law of Lydia Bythewood to John Wickliffe, Gent. who afterwards declares the premises to have been purchased in trust for Lord Viscount Irwin.

The description of the conveyance in 1766, from Mr. Dickinson, trustee of Henry Lord Viscount Irwin to Charles Lord Viscount Irwin, is the same as that of the deed to the voter.

It was admitted that the Red Lion stands at the corners of West-street and Scarfolkes; and Mr. Ellis said, That the premises conveyed to the voter were in a direct line with and at the western extremity of Mr. Medwin's premises; but the garden is larger than the piece described in the rolls of 1611 and 1650.

For the Sitting Members it was said, That something more than deeds ought to be required by the Committee, before they could decide this to be the burgage described in the fourth entry on the roll: That the estate had not been accurately traced beyond Richard Hobbs, and that the first conveyance described the burgage to contain a messuage, and garden plot, which could hardly exist on twenty-six feet by six, the description of the Roll. On the other hand, it was insisted, that a regular title had been deduced from

Pike to Lady Irwin ; and as the land was confessedly next to Mr. Medwin's premises (the residue of the Red Lion) the presumption was irresistible that it was the burgage contended for. Decided to be

GOOD.

56. *Richard Howes* had a conveyance for life from Charles Lord Viscount Irwin in 1774, of *all that messuage or tenement and backside, with the appurtenances, situate in the North-street, &c. late in the tenure of George Holmes, and now or late of William Dean ; which said messuage and premises is one whole and certain burgage, holden of the chief lord or lords of the fee, by the several and accustomed rents and services.*

Referred to the second entry in North-street ; and that the *aforesaid James (Veraye) and Dionisia likewise hold one messuage, one horse-mill, with a backside and garden adjoining, with the appurtenances, being a burgage, by the rent by the year twelve-pence.*

From the book intituled *Burgus et Manerium, &c.* the following entry was read, under the title North-street, 15 Oct. 1650 :—*And that Mary BOOKER, widow, likewise holdeth one messuage, a late mill, backside and garden to the same belonging, being one entire burgage, rent one shilling.*

There is another entry in the same book of the 5th of Oct. 1683. *The homage present, That John Booker, who held one messuage and backside adjoining, on the north side of the King's Head, devised the same to George Booker and his heirs ; who is admitted.*

The Counsel for the petitioners (after observing that the first entry in North-street, described the King's Head ; and the third the Chequer) called *Mr. Ellis*, who said, That the premises occupied sometime ago by George Holmes, consist of a house, brewhouse, small stable, and garden, about the size of the Committee Room ; and that he had always understood that they lay between the Chequer and the King's Head, and adjoined to those burgages ; but he never recollected any vestige of a mill.

The

The only other evidence produced was a conveyance in 1720, from Charles Eversfield, Esq. to Arthur Ingram (afterwards Arthur Lord Irwin) in fee of *all that his messuage or tenement, garden, backside, and premises, being a burgage tenure, situate in the North street, formerly the estate of John Booker, and by him given by will to George Booker.*

The counsel for the Sitting Members remarked, That there was a great chasm in the deduction of the title, that the horse-mill was omitted in the conveyance to the voter, and the garden in the devise to Booker ; which, as the premises were so small, made it probable that they were conveyed to others.

The counsel for the petitioners replied, That the horse-mill might have decayed ; and rested on the situation of the premises surrounded by the two above mentioned burgages. The vote was

LEFT UNDECIDED:

57. *William Harde* had a conveyance from Lady Irwin of *all that messuage or tenement, with the appurtenances heretofore called or known by the name of Blake's, and sometimes Booker's, or by whatsoever, &c. situate in the East-street, in the occupation of Robert Grace, holden, &c. by the yearly rent of one shilling.*

Referred to the third entry in East-street ; and that the *aforesaid Thomas Rowland* likewise holds one messuage, one barn, backside, and garden, formerly *BISHOP's*, and late *Seale's*, being two burgages, by the rent, &c. two shillings.

By a deed of feoffment with livery of seisin, indorsed 4th of June 1634, *John Rowland* conveys to *Robert Parre*, in fee, *all that messuage or tenement, and barn, two gardens, and one croft of land adjoining to the said messuage ; all which premises are parcel of the lands and premises which Thomas Rowland, father of the said John, bought and purchased to him and his heirs of John Seale and Mary his wife, late of Horsham aforesaid, deceased ; and which lands and premises, the said Thomas Rowland, among other lands and premises, did give and bequeath (22 of Jan. 1615) to the said John Rowland, as by his last will, &c. and are now in*

the occupation of the said Robert or his assigns; and are situate, &c. having the king's highway, leading from the market-place of Horsham aforesaid to Slaugham on the north; the king's highway leading from the said market-place towards Cobbett's Bridge on the west; a messuage and garden of Edward Slater on the east; and a croft or close of land of the said Edmund Slater on the south.

Presentment 15 of Octr. 1650, from the book, intituled *Burg' et Man'. &c.* That Jane Parre, widow and relict of Robert Parre, deceased, holdeth of the lord of this manor in free burgage, one messuage, one barn, backside, and garden, in times past Bishop's, and late Seale's, being two burgages, rent two shillings.

The next deed produced was a mortgage in 1705, by which Edward Booker conveys to William Anfell for one thousand years, subject to redemption, *all that his messuage or tenement, malthouse, barn, stable, two gardens, and an orchard, which was formerly a croft of land adjoining to the said messuage, bounded as in the deed of 1634, and reciting that the premises were heretofore the estate of Robert Parre, and by him purchased of one John Rowland.*

These premises were traced with the same description to the Irwin family, except that in a deed of the 23d and 24th of May 1709, between John Anfell and Anne his wife and John Blake, *one garden only is conveyed instead of two.* The boundaries however were the same, and in two presentments, viz. 21st of Octr. 1707, and 10th of Octr. 1709, the rent is said to be one shilling instead of two, as in the roll.

These differences were noticed by the counsel for the Sitting Members; but it was said in answer, That however the rent might have varied, the premises were evidently the same. Decided to be

GOOD.

58. William Ellis had a conveyance from Charles Lord Irwin in 1774, of *all that croft or parcel of land, with the appurtenances in or near the Scarfolkes, called or known by the name of Deanscroft, or by whatsoever other, &c. containing by estimation two acres, in the occupation of Sir Thomas Broughton, being half a burgage,*

gage, holden of the lord of the said borough, by the yearly rent of sixpence.

Referred to the eighteenth entry in Scarfolkes, *And that Thomas Wood likewise holds one croft of land, containing by estimation two acres, with the appurtenances, called DENNIS-CROFT, being half a burgage, &c. sixpence.*

The only deed produced in support of the vote was a lease and releafe in 1745, by which *Young Wills* conveys to *Henry Lord Viscount Irwin* in fee, all that croft or parcel of land with the appurtenances, lying in or near the Scarfolkes, formerly called *Burgefs Croft*, and late *Denniscroft*, containing by estimation two acres, now in the occupation of *Sir Thomas Broughton*, bounding on the highway, leading from *Horsham market-house* towards *Warnham* on the west, and which was given and devised to the said *Young Wills* in and by the last will and testament of *John Young*, late of *Goring*, Esq. deceased; and was formerly the estate of *John Everfidd*, late of *Hockly*.

The counsel for the petitioners then referred to the evidence of *Mr. Hurst* in *Lamb's* case, to prove the situation and identity of the burgage. The vote was decided to be
GOOD.

59. *Henry Penfold* had a conveyance from *Charles Lord Viscount Irwin*, of all that messuage or tenement, garden, and backside, with the appurtenances, formerly called or known by the name or sign of the *GREEN DRAGON*, and now or late of the *Star*, situate in the *South-street*, and now or late in the occupation of *Philip Chasemore*, being a portion of a burgage, rent two-pence.

Referred to the third entry in *South-street*; and, *That Thomas Hurst and Elizabeth his wife, in right of her the said Elizabeth, hold to them and the heirs of her the said Elizabeth of the lord aforesaid in free burgage, one messuage lately built, and garden to the same adjoining, with the appurtenances, formerly Bishop's, and late Turner's, being a portion of a burgage, by the rent, &c. two-pence.*

From the book intituled, "*Burg' et Man.*" &c. the following entry, *Court Baron 1698*: *Item. We present, That Timothy Walker lately purchased to him and his heirs, of Robert Sanderfon*

Sanderfon and Frances his wife, a messuage and garden, sometime Bishop's, in South-street, being a portion of a burgage, rent two-pence.

In a deed of the 27th of May 1707, John Walker assigned the remainder of a Term in certain recited premises to Charles Eversfield, in trust for John Ashlet and George Bridger, to wait upon the inheritance. The recital was taken from a mortgage from *Timothy Walker* to William Margison, of *all that messuage or tenement, garden, backside, out-houses and buildings, with the appurtenances, situate in the South-street, then or late called or known by the name or sign of the Bell, and then in the occupation of the said Timothy Walker or his assigns, and late also in the occupation of Abraham Cooper, or his assigns.*

A lease and release of the 25th and 26th of Janr. 1714, conveys from Charles Eversfield to Robert Hurst for life, *all that his messuage or tenement, barn, stable, and backside, with the appurtenances, which was formerly called or known by the sign of the Bell, and then bore the name or sign of the Green Dragon; and was lately purchased by John Ashlett, and by him devised to the said Charles Eversfield, without mentioning the street.*

In 1737 Charles Eversfield and John Middleton convey to Henry Lord Viscount Irwin, in fee, *all that messuage or tenement, garden, backside, out-house and buildings, in the South-street, formerly called the Bell, and now the Green Dragon.*

Mr. Ellis said, That the premises were a few years ago occupied by Chasemore, who still pays the rent. He had heard that they went by the name of *The Star and Green Dragon*. Decided to be

GOOD.

60. *William Jameson* had a conveyance in 1781 from Frances Viscountess Dowager Irwin, of *all that messuage or tenement, shop, garden, backside, and premises, commonly called Hurst's Brewhouse, situate in the West-street; and also, all that croft of meadow or pasture-land, called RANDOLL's alias Randalcroft, containing by estimation four acres, be the same*
more

more or less, with the barns, stables, and buildings standing thereupon, situate in the Scarfolkes.

This was referred to the eighth entry in Scarfolkes ; and that *Ann Woode*, widow, holds for the term of her life, remainder to *John Wood*, her son, for the term of his life, remainder to the heirs of *Thomas Patchinge*, deceased, one barn and one garden, by estimation three acres of land, with the appurtenances, being one entire burgage, called *Randoll's*, by virtue of the testament, in writing, of *William Patchinge*, deceased, &c. by the rent, &c. twelve-pence.

The only objection taken, was the difference in the contents of the burgage, the roll describing it as three acres, and the deed to the voter as four ; but when *Mr. Partridge* was about to give an explanation of this, the Committee hinted that it was unnecessary ; and the vote was decided to be

GOOD.

61. *Harry Weller*: his title-deeds being called for, his vote was given up as bad. He had been admitted to part of *Potter's Croft*, and had voted in right of that admission.

62. *Richard Grimstead* voted for part of *Ockenden's* or *Grandford's*. Admitted to be

BAD.

The following vote remained upon the poll for the petitioners, unimpeached :

63. *Nathaniel Tredcroft*, he voted for *DELVES*.

64. *John Smith* voted for *Lord William Gordon* and *Mr. Shelley* ; and his vote remained unimpeached. He voted, for *COCKMAN's* since *WICKER's*.

V O T E S.

VOTES TENDERED FOR THE PETITIONERS,
BUT NOT DISCUSSED BEFORE THE
COMMITTEE.

N. B. When the Voters tendered their votes, they were interrogated as to the Contents of their Deeds; and a short minute of their Answers was entered on the Poll.

John Joanes, part of the Chequer Inn, rent two-pence.

Guildford Vinall, a garden-plot of ground, bounded by the road to Slaugham on the north, the road to Cobbet's bridge on the east, and the messuage and garden late of John Chafiner, on the south and west, &c.

William Boorman, part of the George.

Edward Stanford, one acre of land, part of Elliot's in East Street.

John Lintott, a close containing 15 rods, lying in East-Street, bounded by the lands of Nicholas Best on the east, north, and west, and the King's highway from the Market-place towards Birchin Bride on the south, rent three-pence.

Philip Chafemore, part of Grandford's.

Thomas Plumer, one sixth part, the whole into six equal parts to be divided, of and in all those two fields, and late *Rowland's*, containing eight acres, more or less, in East-Street, which one sixth part is burgage land, rent one shilling.

John

John Plumer, all that barn and garden, called Gilham's, being or reputed to be part of Gilham's, in or near East-Street, rent one shilling.

Charles Champion, a close containing 3 acres, reputed part of Gilham's.

Thomas Honeywood, part of the Chequer.

William Palmer, one sixth part of Rowland's.

James Thornton, a messuage, garden, and backside, formerly part of the Chequer.

Edward Dubbins, a moiety of a certain croft in East Street, commonly called Potter's Croft, rent one shilling.

William Penn, part of the George.

Peter Potter, a plot of ground, being a portion, rent six-pence, in East-Street, in the occupation of John Taylor.

John Aldridge, Esq. a messuage, with brewhouse, &c. part of the King's Head.

John Collins, one sixth part of Rowland's.

Daniel Waterfield, a piece of burgage-ground, being part of a garden-plot, containing 36 feet of assize in length, and twenty feet in breadth, between the dwelling-houses of Edward Dubbins and of William Rye.

Henry Caddy, one acre, part of Elliot's.

John Hardwicke, a messuage in North-street, in the occupation of Thomas Rye, rent four-pence.

James Pitts, two closes, containing four acres in Scarfolkes, called Granford's, being a portion rent, eight-pence.

Thomas Aldridge, part of the Chequer.

Appendix.

[A.]

THE turn which this case might have taken, having induced me to consider the nature of investiture, and the necessity of the concurrence of the lord in the transfer of land holden of him by the feudal tenure, I have thrown my observations into the following note, which I trust will not be thought unconnected with the case.

If we look into the writings of the feudists, we shall find it difficult to lay down a general rule as to the necessity of the concurrence of the lord to the alienation of land by his vassals. This uncertainty arises from the very nature of the feudal system, which for the most part was not promulgated by positive enactment, but collected from the customs of different nations, who adopted indeed the general principles of the tenure (derived in Gaul from the Franks, in Spain from the Goths, and in Italy from the Lombards) but modified these principles in such a manner by the local customs of those countries, that very different systems are found to prevail in each of them. Hence the title of the book of feuds is, *Consuetudines Feudorum*. Germany indeed, as it gave birth to the tenure, retained in their purity the longest its original principles; and many of the constitutions of the Emperors are preserved in the book of feuds; but these were only binding within their own dominions, and are frequently entirely disregarded in other countries, where, nevertheless, the feudal tenure is well known and acknowledged. By the first constitution of Lotharius, it is declared, That no one shall sell any part of
the

the fief without the consent of the lord (a) : but in France the vassal might transfer the whole right of his fief without such consent, except he was restrained by the terms of the original investiture ; the purchaser being bound to perform all the services due from the vassal, and to tender his fealty and homage within the limited time ; which if he did not do, the lord had a right to seize the produce of the land (b). In Italy also, where, nevertheless, the system prevailed in great purity, we find different customs observed in different states (c). In some places no alienation of the land, even *jure libelli* (d) was permitted ; in others, the tenant was allowed

(a) *Decernimus nemini licere beneficia quae a suis senioribus habet, sine ipsorum permissione distrabere.* Feud. lib. 2. Tit. 53.

(b) *Et tamen illud quoque fuisse permiffum ante constitutionem Lotharii, ut existimem facit. § Item si duo fratres. Ut hodie moribus Galliae receptum est posse omnino jus feudi, sine voluntate domini, a vasallo cedi et vendi alteri : qua ratione vulgo dicitur feuda patrimonii jure censer. Ceditur cum sua causa, nam emptor fidem et hominium debet, quod nisi profiteatur intra constituta tempora, dominus fructus facit suos, vel quibusdam locis feudum domino aperitur ; cujus generis feudum dicitur fiefs de danger, quod ejus amittendi vasallo periculum immineat, nisi mature fidem et hominium exhibuerit. Emptor etiam debet *αναμψεις* et *εισδεξινα*, et militiae oneribus, ac servitiis feudo coherentibus obligatur. Cujacius de feudis, Lib. 1. Tit. 2.—This is nearly the provision of the statute of Westminster 3. See also Craig, Lib. 3. Dieg. 3. § 32.*

(c) *Si Clientulus voluerit partem suam feudi alienare, id est, medium, sine domini voluntate poterit hoc facere : ulterius progredi non potest, secundum justum et verum usum : alioquin et feudum amittit, et non valebit quod factum est. Quod dictum est alienare, intelligas de libello. [Huic consuetudini derogatum est per legem Lotharii.] Mediolanenses vero irrationabiliter considerantes, dicunt clientulum etiam alienare posse in totum, et sine domini voluntate. Feud. Lib. 1. § 13.*

(d) *Libellarius contractus id est venditio (alii tamen conventionem*

lowed to alienate in that manner to the extent of half his fief, and at Milan even the whole. Hence Craig, in laying down general rules for the better understanding of fiefs, says, *That the custom of the country regulates the feud no less than the terms of the investiture (e).*

Upon every change, either of the lord or tenant, according to the generally received opinion, it was necessary that the *investiture* should be renewed. Hence an investiture is said to be either of an old fief or of a new one (f). But if the feud was old; that is, if the vassal claimed the investiture in right of a feud granted to the person whom he represented, the solemnity was less than in granting the investiture of a new fief; and accordingly Cujacius says, the denial of the investiture in this instance, is more an injury done to the vassal than the obtaining of it a benefit conferred by the lord (g). It is remarkable, that this less solemn

ventionem esse volunt) quæ fit scriptura, interveniente certo pretio, et hoc amplius, certa pensione constituta in annos singulos; et hac plerumque lege, ut statuto condictione tempore contractus renovetur, rursus numerato pretio certo vel arbitrario. Calvin Lexic. See also Cujac. in the section above cited.

(e) *Mos regionis non minus dat legem feudo, quam tenor (investituræ) nam ut ait Baldus, consuetudines feudorum sunt locales. Craig. Dieg. 9. § 36.*

(f) *Investitura autem aut fit de veteri beneficio, aut de novo. Quæ de veteri fit etiam a minore potest fieri.—Novi vero investitura feudi, non ab alio recte fit, nisi ab eo qui legitime suorum bonorum administrationem habet. Feud. Lib. 2. Tit. 3.*

(g) *Duplex est investitura, alia veteris, alia novi beneficii. Veteris est quæ fit a successore domini vel successore vassalli, mortuo sc. domino vel vassallo; Novi, ex qua primum formam suam et originem feudum accipit. Hæc dat legem feudo et contractus est, illa quæ fit de veteri feudo, non est contractus, sed feudi tantum quædam veluti recognitio simplex sive ἀναμνησις, quæ fit gratuito constitutionibus Neapolitanis, et nostris illata certa pecunia.—*

lemn investiture was requisite in France upon every descent as well as purchase, although the maxim obtains there as well as here, that *mortuus fasit vivum* (b). In Scotland, where that maxim is not acknowledged, the heir is obliged to *make up complete titles*; that is, to renew his *seisin*, and to procure a *charter*, acknowledging himself to hold the land of the lord of the fee. The difference between these is well explained by Craig, who says, That the charter and seisin constitute one investiture; by which he must be understood to mean a complete investiture to which possession is added, as he afterwards says, that the Charter is the Investiture (i). In Germany (k), and in Holland

pecunia.—Cum inquit de veteri beneficio fit investitura, id est nulla solemnitas exigitur. Satis est rectum esse feudum, et jurari fidem. Rei nomen exprimi, et adhiberi pares non est necesse; et fieri potest a minore viginti quinque annis, ut hoc loco Obertus ait. De hac dicere possis non esse beneficium sed injuriam si quis eam non impetraverit. Cujac. de Feudis, Lib. 2. Tit. 4.

(h) *Apud Gallos in successione fasina non est necessaria; mortuus enim fasit vivum, qui successioni proximus est, et ad succedendum habilis. Craig, Lib. 2. Dieg. 7. § 28. Solet et ad domum domini plerunque investitura peti fidelitas offerri. Cujac de Feud. Lib. 1. Tit. 2. et Lib. 2. Tit. 4.*

(i) *Ex Charta, sola personalis actio competit, si tradita fuerit; neque tamen semper, cum sit pactum tantum nudum, quod ad actionem producendam non sufficit: et ita senatus aliquando censuit. Ex fasina nascitur realis actio, si mandato Domini traditam Constet: cum tamen utraque unam in vestituram, unicum (ut loqui solemus) Infeoffamentum constituent. Cr. Lib. 2. Dieg. 2. § 18. Neque fasina per se investitura dici potest. Ibid. Investitura quam Chartam dicimus. Lib. 2. Dieg. 7. § 1. The precept of the lord to deliver seisin, was at first a separate instrument, but is now by act of parliament directed to be engrossed in the Charter.*

(k) *Renovanda vero erat investitura a singulis possessoribus, ideo, quod olim sicuti feudorum, ita et aliorum praediorum dominium utile non nisi ad certum tempus vel ad dies vitae daretur. 1. Feud. 1. § 1. Quod tametsi postea in bonis censiticis, non minus quam in*

Holland (1), the investiture is also renewed on every change of the possessor.

There is a manifest difference between a *seisin* of an estate, as we understand the term, and this *investiture* of the feudal law. Originally indeed, when feuds were granted *in verba de*

feudis mutatum sit; mansit tamen mos, ut novi possessores investituræ renovationem petere, eoque nomine præstare tenerentur laudemium quo possessio veluti redimebatur a domino. Unde et relevii vocabulum medio ævo invaluit. Got. Hienecii Elem. Juris Germanici. Vol. 1. p. 459. Edit. 3.

(1) *Feudo sæpius per successionem ad novos subinde possessores translato, postremus, omnium decessorum nomine, feudum recogniturus erit. Exemplo res clarior fiet. Si quis cliens coram Curiae feudalis legato, vel uti hodie, coram archivorum magistro, in rem presentem se sistens, feudo paterno investiri postulet; idemque ex more solenni, de mortis tempore interrogatus, quo futuri vassalli parens in fata concesserit, simul utrumne is mortis tempore parenti suo fuerit primigenius, nec ne? respondeat, triennium jam esse quo pater vita functus quaternos ex se reliquerit filios; ceterum cum prior natu parenti non ultra trimestris temporis spatium fuerit superstes; secundus porro annum et diem primo supervixerit; tertius denique ante pauculos dies in vivis esse desierit; unum se modo unicumque feudi successorem reliquum esse; hac possessione cum evidenter liqueat, successionem demum quarta huic feudum delatum esse, consequens erit totidem illum tam laudemia, quam jura curialia quæ vocant, representare debere. Et quoniam secundus primum, deinde et tertius anni integri, et quod excurrit temporis moram fecerint, laudemia cæteraque honoraria duplicanda erunt: In tantum ut non nisi senis demum persolutis laudemiiis, totidemque juribus, feudo investiri debeat.* Corn. Neostad. de Feudi Hollandi, Westfrisicique Success. p. 50. This author, p. 54. explains the nature of fiefs in Holland and Westfrisicland to resemble in some respects our burgage.—Tametsi Feudum pluribus Testamento fuerit relictum, non nisi unicum (tamen pro rata cujusq. portionis, sectionis primæ seu fissionis ergo ut vocant, alio namque modo feudi divisio fieri non potest) principi solvitur laudemium.—Cæterum in quotascunque feudum partes discedit, totidem ex his nova feuda fieri necesse est. Quæ si temporis decursu, velut post-

liminio,

de præfenti, in fight of the land or upon it, and with due solemnity before the *pares* of the Lords court, possession was given along with the investiture; and therefore it is said *Investitura proprie dicitur possessio* (m). But it must frequently have happened, that the solemnities of investiture were performed when neither the Lord or the Vassal were in possession of the land, or when it was necessary to deliver the actual seisin by a third person; or the Lord might after the performance of the solemnity refuse to deliver seisin of the land. The Book of Feuds therefore notices all these cases (n). In these instances, and in general, if we consider the subject accurately, the Investiture was distinguished from the seisin; for if the heir, in a proper feud, entered upon the land of his ancestor, he would be said to be seised of it, *even in fact* before he received the Investiture from the Lord; and, by the Book of Feuds, had a year and a day allowed him to tender the oaths of fealty and homage (o). With us a seisin *in law* is sufficient for some purposes; a singular instance of which is reported in Croke Eliz. 503. Broughton and Randal. A father and son were both hanged in one cart; but because the son (as was deposed by witnesses) survived, which appeared by some tokens, viz. his shaking his legs, his *feme* thereupon demanded dower, and obtained it, upon the issue *nunques seised dower*. This seisin with us would also have transmitted the land by descent through the son to the next heir; but in Scotland the heir would have succeeded to the father and not to the son, because the son had not *made up his titles*. Till this investiture took

liminio, in unum rursus coaluerint, feudum ad jus suum primigenium reverti, ac pristinam denuo naturam recipere est consentaneum—sed hoc de ipsis honorariis dominicis tantum, laudemisque abunde dicta sunt: Jurium enim curialium præstationes ab omnibus ex æquo, sine ulla porro exceptione præstari debent.

(m) *Feud. Lib. 2. Tit. 2.*

(n) *Lib. 1. Tit. 4. Lib. 2. Tit. 42. 43.*

(o) *Feud. Lib. 2. Tit. 40. Lib. 2. Tit. 37. § 1.*

place, the lord might dispute the title of the vassal, however good it might be against strangers: after the investiture given by the Lord, though strangers might dispute the title, the Lord could not.

With great deference to so elegant and able a writer as Mr. Justice Blackstone, he does not seem to have paid sufficient attention to this distinction, when he says (q) that the notoriety of seisin "hath succeeded in the place of the ancient feudal investiture, whereby, while feuds were precarious, the vassal on the descent of land was formerly admitted in the Lords court (as is still the practice in Scotland) and there received his *seisin*, in the nature of a renewal of his ancestors grant, in the presence of the feudal peers." For in truth what the vassal necessarily received in the Lords court was the *investiture*, as above explained; the *seisin* being delivered or not according to the circumstances of the case. There is the same inaccuracy in the report of the judgment of the Court of King's Bench in the case of *Taylor on the Demise of Atkyns*, 1 Bur. 109. Lord Mansfield there quotes Bracton's definition of intrusion, "*possessio quæ nuda est omnino, et sine aliquo vestimento quæ dicitur intrusio*;" and adds, according to the report, "*Vestimento is seisin, Investiture*," though the terms are by no means synonymous. The statute *quia emptores*, supercedes the necessity of an investiture, or acknowledgement of the new tenant by the lord, in order to complete the right of the new tenant to the land, because it gives free liberty to tenants to sell their lands to whom they please; but it must be acknowledged to be a very different question, whether admission in the Lords court be or be not necessary to constitute a burgess of a particular borough which exists by prescription. Before that statute

(q) *Erfk. Instit.* p. 208.

(r) *Vol. 2. p. 209.*

it was not unusual for lords to grant to their tenants the liberty of selling their burgages ; but as no acknowledgement was of common right due to the lord on these transfers of the land, except on alienations by tenants *in capite* (s), it was frequently required by those grants that the tenant, if about to sell his burgage, should surrender into the hands of the lord or his steward, who was to give it to the purchaser on the payment of a certain sum of money ; or that he should pay a certain sum to the lord as a *quit-rent* for the sale. Instances of this occur in the ancient grants to the burgesses of Okehampton and Pontefract (t) ; and

(s) *Black. Com. vol. 2. p. 72.*

(t) *Preterea concessi et confirmavi præfatis burgenfibus meis et successoribus suis, libertates et liberas leges quibus utuntur burgenfes Dom. Regis de Grimesbi, quæ tales sunt ; quilibet burgenfis potest terram suam dare vel vendere cui voluerit, nisi religioni, salva firma domini ; et intrabit placitum et reddet terram in manus Pretoris, et Pretor dabit terram emptori, de dono domini, quietam ab omnibus, et emtor dabit similiter unum denarium.* Grant of Roger de Lasci to the Burgesses of Pontefract. 5th of Rich. 1. Frazer vol. 1. Appen. p. 11. *Si Burgenfis velit recedere, vendat burgagium si vult cuicunque voluerit exceptis domibus religiosis, et ad quiet' debit' dando domino duodecim denar' et preposito quatuor, et burgo quatuor quietus recedat.* Grant of Robert de Courtney to the Burgesses of Okehampton. Ibid. p. 83. *To which we may add the following passages from the Leges Burgorum, which are at the end of the Regiam Majestatem. Quicunque vendiderit terram suam, vel partem terræ suæ, ille qui vendidit erit infra domum, et exhibit, et alius foris stans intrabit ; et unus dabit præposito unum denarium pro exitu de terra, et alius dabit denarium, pro introitu et sasina.* Cap. 56.

Item feudi firmarius non potest firmarium facere, de aliqua terra, nisi reddatur domino capitali ; et ipse faciet illum firmarium et tunc ille firmarius habebit libertatem burgi ; quia duo homines, simul et semel, non possunt habere libertatem burgi, de uno et eodem burgagio. Cap. 138.

it is not improbable that a similar charter was granted to those of Horsham, which would account for the custom contended for by the sitting members.

[B.]

HORSHAM BOROUGH } A Survey indented,
AND MANOR. (a) } taken, and made at a
court there held the
13th day of August, in the year of the reign of our Lord James by the grace of God of England, Scotland, France, and Ireland, King, defender of the faith, &c. (that is to say) of England, France, and Ireland the ninth, and of Scotland the forty-fifth, before John Peers, Gent. steward of the courts of the said manor, by virtue of a warrant from Thomas Earl of Arundel and Surrey to the said John Peers and Daniel Pulleyn, John Birstye, and John Nye, Gent. and others, directed in the presence of the said John Peers, Daniel Pulleyn, John Birstye, and John Nye, and other lawful men of our said Lord the King, there then present, upon the oaths of Henry Whytall, one of the bailiffs of the borough aforesaid, Robert Earsfield, Gent. Edward Parkhurst, Thomas Hurst, Robert Tredcroft, Henry Weekyas, William Seator the Elder, Thomas Smythe, John Bennet, Henry Feeft, Thomas Lyntott, Thomas Maye, Thomas Rowland, Richard Whyte, Thomas Awood, Tho-

(a) The above is a copy of the translation of the survey which was delivered to the Clerk of the Committee.

mas

mas Groombridge, John Awood, and Ralph Coote, burgesses of the said borough, who being sworn and charged upon articles at this court after specified, say upon their oaths aforefaid, as follow : that is to say,

SCARFOLKES.

FIRST, That the aforefaid Robert Tredcrofte holds to him and his heirs, of the lord of the manor aforefaid in free burgage, a certain tenement, being half a burgage, containing one messuage, with barns, stables, a backside and gardens, with the appurtenances, called the *Red Lion*, formerly called Frenches, and lately Agasse's, by the rent by the year, payable at the Feast of St. Michael the Archangel,

s. d.
8 0

AND, That Richard Hurst likewise holds one piece of land, parcel of the aforefaid tenement, called the *Red Lion*, containing in length feet, and in breadth feet, being a portion of a burgage, by the rent by the year, payable at the same feast.

0 3

AND, That William Patchinge likewise holds another piece adjoining, in length 44 feet, and in breadth 33 feet, being a portion of a burgage, by the rent by the year, payable at the same feast,

0 2

AND, That Thomas Pike likewise holds another adjoining piece, in length 26 feet, and in breadth 6 feet, being a portion of a burgage, by the rent by the year, payable as above,

0 2

AND, That Robert Earsfield, Gent. likewise holds one messuage and one garden, called *Holbrook's*, being half a burgage, by the rent by the year, payable as above,

0 6

AND, That Bartholomew Sayeres likewise holds one garden, late parcel of *Holbrooke's* aforefaid,

K 4

being

being a portion of a burgage, by the rent by the year, payable as above, s. d.
0 3

AND, That Henry Patchinge likewise holds one messuage, a garden, with the appurtenances, late Barker's, being a portion of a burgage, by the rent by the year, payable as above, 0 2

AND, That Anne Woode, widow, holds for the term of her life, remainder to John Woode, her son, for the term of his life, remainder to the heirs of Thomas Patchinge, deceased, one barn and one garden, by estimation three acres of land, with the appurtenances, being one entire burgage, called *Randoll's*, by virtue of the testament in writing of William Patchinge, deceased, dated the 18th day of Jan. in the year of our Lord, according to the English computation, 1598, which the said William held of the lord aforesaid, to him and his heirs in free burgage, by the rent by the year, payable as above, 1 0

AND, That the aforesaid Thomas Groombridge likewise holds one piece of the aforesaid tenement, called *Randoll's*, in length 50 feet, and in breadth 30 feet, being a portion of a burgage, by the rent by the year, payable as above, 0 2

AND, That the aforesaid Thomas Lyntott likewise holds a certain tenement, being a burgage, containing one messuage, one barn, one stable, one garden, and three acres of land, with the appurtenances, late *Bornes*, by the rent by the year, payable as above, 1 0

AND, That the aforesaid Thomas Maye likewise holds one piece of a garden, late parcel of the said tenement, being a portion of a burgage, by the rent by the year, payable as above, 0 2

AND, That the aforesaid Robert Tredcrofte likewise holds another adjoining piece, in length 123 feet,

feet, and in breadth 24 feet, being a portion of a s. d.
 burgage, by the rent by the year as above, o 3

AND, That John Ravenscroft, Gent. likewise
 holds one messuage and garden, with the appurtenances, called *Baldwyn's*, being a portion of a burgage, by the rent by the year, payable as above, o 3

AND, That the same John Ravenscroft likewise
 holds one garden, being a portion of a burgage, called *Apfley's*, by the rent by the year, payable as above, o 3

AND, That the aforesaid Henry Whytall likewise holds one messuage, one barn, and one garden, with the appurtenances, late Michell's, called *Barneboufe*, being half a burgage, by the rent by the year, payable as above, o 6

AND, That the aforesaid Thomas Rowland likewise holds one croft of land, containing by estimation three acres, with the appurtenances, called *Pollardscroft*, being one entire burgage, by the rent by the year, i o

AND, That John Lyntott, the son and heir of Richard Lyntott, deceased, likewise holds one croft of land next to Beanbridge, containing two acres, with the appurtenances, called *Steedscroft*, being half a burgage, by the rent by the year, payable as above, o 6

AND, That Thomas Woode likewise holds one croft of land, containing by estimation two acres, with the appurtenances, called *Denniscroft*, being half a burgage, by the rent by the year, payable as above, o 6

AND, That John Nye, Gent. holds to him and his heirs of the lord of the manor aforesaid, in free burgage, a certain tenement, being one entire burgage, containing by estimation four acres of land,

with

with the appurtenances, in two crofts, called *Ocken-*
den's; one having a certain narrow way, being a
 wayne-way, leading from the king's highway there
 into the said croft, by the rent by the year, payable s. d.
 at the aforefaid feaft, I 0

AND, That the fame John Nye likewise holds
 to him and his heirs of the fame lord, in free bur-
 gage, a certain other tenement, being an entire bur-
 gage, containing one meffuage, one barn, backside
 and garden, by estimation three acres of land, with
 the appurtenances, called *Grandford's*, by the rent
 by the year, payable at the fame feaft, I 0

AND, That Henry Stone likewise holds to him
 and his heirs of the lord aforefaid, one meffuage, one
 garden and backside, late Snelling's, being half a
 burgage, by the rent by the year, payable at the
 fame feaft, 0 6

AND, That William Grenesfield holds to him and
 his heirs of the lord aforefaid, one meffuage, barn,
 backside, garden, and orchard, with the appurte-
 nances, called *Ockenden's*, late Snelling's, being one
 entire burgage, by the rent by the year, payable at
 the fame feaft, I 0

AND, That Thomas Patchinge likewise holds
 one curtilage inclofed with pales, late Penycode's,
 lying towards the aforefaid burgage of William
 Grenesfield, on the east part; and to the tenement
 of the aforefaid Henry Stone on the south, west,
 and north parts; the fame curtilage being a portion
 of a burgage, by the rent by the year, at the fame
 feaft, 0 2

AND, That John Pylfould likewise holds one
 meffuage and garden, with the appurtenances, cal-
 led *Snelling's*, being a portion of a burgage, by the
 rent by the year, at the fame feaft, 0 4

AND,

AND, That John Lyntott, son and heir of Richard Lyntott, deceased, holds to him and his heirs of the lord aforesaid, in free burgage, a certain messuage, with a certain house, called the *Gaol-house*, with the barns, backfides, gardens, and twenty acres of land, with the appurtenances to the same messuage adjoining, called *Butler's, sometime the Gaol-house and land*, being five burgages and an half, by the rent by the year, at the same feast, s. d.
5 6

AND, That John Pancras likewise holds one messuage and garden, with the appurtenances, being half a burgage, late parcel of Butler's aforesaid, by the rent by the year, at the same feast, o 6

EAST-STREET, Ss.

AND, That the aforesaid Henry Weekyns holds to him and his heirs of the lord of the manor aforesaid in free burgage, one messuage, barn, backside, garden, and four acres of land, with the appurtenances, called *Abbley's*, being two entire burgages, by the rent by the year, 2 o

AND, That Beatrix Constable likewise holds one messuage, backside, garden, and orchard, by estimation one acre of land, with the appurtenances, being one entire burgage, by the rent by the year, at the feast aforesaid, 1 o

AND, That the aforesaid Thomas Rowland likewise holds one messuage, one barn, backside, and garden, formerly *Bishop's*, and late *Seale's*, being two burgages, by the rent by the year, at the feast aforesaid, 2 o

AND, That John Bennet likewise holds one messuage, backside, and garden, with the appurtenances, late *Broadbridge's*, being a portion of a burgage, by

by the rent therefore by the year, at the feast s. d.
aforesaid, 0 4

AND, That Thomas Patchinge, the son and heir of Thomas Patchinge, deceased, likewise holds two acres of land, with the appurtenances, late Potter's, being two burgages, by the rent by the year, at the same feast,

2 0

AND, That the aforesaid Thomas Rowland likewise holds one meadow, containing by estimation seven acres, with the appurtenances, formerly the aforesaid Bishop's, and late Seale's aforesaid, being six entire burgages, by the rent by the year, at the same feast,

6 0

AND, That the aforesaid Edward Parkhurst and Richard Whyte likewise hold jointly one croft, containing by estimation two acres of land, with the appurtenances, late *Ellyott's*, being two entire burgages, by the rent by the year, at the same feast,

2 0

AND, That the same Edward Parkhurst, and Elizabeth his wife in right of her the said Elizabeth, hold to them and the heirs of her the said Elizabeth of the lord aforesaid, in free burgage, one messuage, one barn, and three acres of land, with the appurtenances, late Andrew Robyson's, being three entire burgages, by the rent by the year, payable at the same feast,

3 6

AND, That the same Edward Parkhurst and Elizabeth likewise hold one toft and one garden, with the appurtenances, late Patching's, being half a burgage, by the rent by the year, at the same feast,

0 2

AND, That the same Edward holds one croft of land, containing by estimation two acres, with the appurtenances, called *Hollandcroft*, being one entire burgage, by the rent,

1 0

SOUTH.

SOUTH-STREET, Ss.

AND, That Thomas Sheppard, Gent. and Mary his wife, in right of her the said Mary, hold to them and the heirs of her the said Mary of the lord aforesaid in free burgage, one messuage, one barn, one garden, and one orchard, with the appurtenances, being a portion of a burgage, by the rent by the year, payable at the same feast, s. d.
o 4

AND, That the aforesaid John Wood holds to him and his heirs of the lord of the manor aforesaid in free burgage, one messuage, one barn, one garden, and one orchard, with the appurtenances, formerly Potter's, being a portion of a burgage, by the rent by the year, payable as above, o 3

AND, That Thomas Hurst and Elizabeth his wife in right of her the said Elizabeth, hold to them and the heirs of her the said Elizabeth, of the lord aforesaid, in free burgage, one messuage, lately built, and garden to the same adjoining, with the appurtenances, formerly Bishop's, and late Turner's, being a portion of a burgage, by the rent by the year, payable as above, o 2

AND, That the aforesaid Edward Parkhurst and Elizabeth his wife, likewise hold one messuage, one horse-mill, and garden, with the appurtenances, being half a burgage, by the rent by the year, payable as aforesaid, o 6

AND, That William Coe holds to him and his heirs of the lord aforesaid, in free burgage, one messuage, with a backside and garden adjoining, late Forman's, and formerly Foyce's, being a portion of a burgage, by the rent by the year, payable as above, o 4

AND,

AND, That the aforesaid Edward Parkhurst and Elizabeth his wife, in right of her the said Elizabeth, hold to them and the heirs of her the said Elizabeth of the lord aforesaid, in free burgage, one messuage, with a backside and garden adjoining, being half a burgage, by the rent by the year, payable as above, s. d.
o 6

AND, That Henry Patchinge holds to him and his heirs of the lord aforesaid, in free burgage, one messuage, one garden, and one orchard, with the appurtenances, being half a burgage, late Hadman's, by the rent by the year, payable at the same feast, o 6

AND, That the aforesaid John Ravenscroft holds to him and his heirs, of the lord aforesaid, in free burgage, one messuage, with buildings, barns, stables, backside gardens, orchards, and one acre and a half of land, with the appurtenances, late Nutlye's, being one entire burgage and an half of one burgage, by the rent by the year, payable as above, i 6

AND, That Rowland Wood likewise holds one messuage, with a backside, garden, orchard, and one croft of land, containing two acres adjoining, with the appurtenances, being one entire burgage, by the rent by the year, payable at the same feast, i o

AND, That the aforesaid Ralph Coote likewise holds one messuage, with a backside and garden adjoining, with the appurtenances, being half a burgage, by the rent by the year, payable at the same feast, o 6

AND, That that the aforesaid Henry Feest likewise holds one messuage, with a backside and garden adjoining, with the appurtenances, being half a burgage, by the rent by the year, payable at the same feast, o 6

AND, That Arthur Woodgate likewise holds one messuage,

messuage, with a barn, backside, and garden to the same adjoining, with the appurtenances, late Allen's, and formerly Holbrooke's, being one entire burgage, by the rent by the year, payable at the same feast, s. d.
1 0

NORTH-STREET, Ss.

AND, That James Veraye, and Dyonisia his wife, one of the sisters, and co-heiress of John Jenner, deceased, in right of her the said Dyonisia, hold to them and the heirs of Dyonisia, one messuage, with a backside, garden, and two shops to the same adjoining, with the appurtenances, being half a burgage, by the rent therefore by the year, at the same feast payable, o 6

AND, That the aforesaid James and Dyonisia likewise hold one messuage, one horse-mill, with a backside and garden adjoining, with the appurtenances, being a burgage, by the rent by the year, 1 0

AND, That the aforesaid Thomas Smythe, and Elizabeth his wife, another sister and co-heiress of the said John Jenner, in right of her the said Elizabeth, likewise hold one messuage, with a barn, backside, and garden adjoining, with the appurtenances, called the *Chequer*, being one entire burgage and a half, by the rent therefore by the year, payable at the same feast, 1 6

AND, That Richard *Heyborne* holds to him and his heirs of the lord aforesaid, in free burgage, one messuage, with a backside and garden adjoining, with the appurtenances, late Booker's, being half a burgage, by the rent therefore by the year, payable at the same feast, o 6

AND, That the aforesaid William Slater the Elder, likewise holds one messuage, with barns, stables,

stables, backside, garden, orchard, and four acres of land to the same adjoining, with the appurtenances, called the *George*, late Botting's, being two burgages and half a burgage, by the rent by the year, payable at the same feast, s. d.
2 6

AND, That the aforesaid John Lyntott likewise holds one messuage, a house called a Brewhouse, with a backside, garden, and orchard, with the appurtenances, called *Cockman's*, late Ingram's, being one entire burgage, by the rent therefore by the year, payable at the aforesaid feast, 1 0

[C.]

Lord William Gordon and Mr. Baillie after the decision of the Committee, severally brought actions against Drew Michel and John Rawlinson the Bailiffs, for a false return. These came to be tried before Mr. Justice Grose and a special Jury, at the summer assizes for the county of Suffex, held at Horsham in August 1792 : counsel for the plaintiffs, Messrs. Pigott, Rous, Adam, and Bayley; for the defendants, Messrs. Serjeant Bond, Hurst, Shepherd, and Garrow.

The first action tried was that in which Mr. Baillie was plaintiff. There were four counts in the declaration. The first stated, that the Borough of Horsham in the county of Suffex was an ancient borough, and that for a long space of time two burgesses have been elected and sent, and of right ought to be elected and sent, to serve as burgesses for the said borough in Parliament. That before the time hereinafter mentioned, viz. on the 16th of June 1715, it was determined in the House of Commons of this kingdom, that the right of Election of members to serve in Parliament for the said borough, was in all such persons as have an estate of inheritance, or for life, in burgage houses or lands lying within

lying within the said borough, which said determination from thence, until, and at, the time of the return hereinafter next mentioned, was the last determination in the House of Commons of this kingdom of the right of election in the said borough. That on the 12th of June 1790, a writ under the great seal of Great Britain, issued out of the court of Chancery, directed to the sheriff of Suffex, for a general election within that county, for a parliament to be holden on the 10th of August; which writ was afterwards, and before the return, delivered to Henry Manning, Esq. the then sheriff, to be executed in due form of law; by virtue whereof he on the 12th of June 1790, made his precept in writing, sealed with the seal of his office, directed to the bailiffs of the borough of Horsham, to whom the execution of that precept of right belonged, for the election within the said borough of two burgeses of the said borough, according to the form of the said writ; which precept was afterwards and before the return thereof, delivered to the defendants, who then and from thence, until, at, and after the election aftermentioned, were bailiffs of the said borough, to be executed in due form of law. That on the 19th of June 1790, an election of two burgeses of the said borough to serve as burgeses for the said borough, in the said parliament, was had and made according to the exigency of the said writ and precept; at which election the plaintiff, Lord Wm. Gordon, Timothy Shelley, Esq. and Wilson Braddyll, Esq. were candidates. That the plaintiff at the said election was elected to serve as one of the burgeses for the said borough in the said parliament, by a majority of such persons as had at the time of such election an estate of inheritance or for life, in burgage houses or burgage lands lying within the said borough: Yet the defendants, well knowing the premises, but not regarding their duty, or the statute, did not certify and return plaintiff to be elected to serve as a burgeis for the said borough in the said parliament; and on the 19th of June 1790, caused an indenture to be made between the said

Henry Manning the then sheriff, of the one part, and themselves and divers burgeses of the said borough, of the other part, and caused one part of the said indenture to be sealed with the common seal of the said bailiffs and burgeses; in which indenture it was falsely alledged that the said bailiffs and burgeses of the said borough, as the major part of the burgeses of the said borough, of them who at that election were present, as well for themselves as for the whole borough, had elected Timothy Shelley, Esq. and Wilson Braddyll, Esq. to be burgeses of the said borough to the said parliament. That the defendants afterwards, contrary to their duty and the statute, certified and returned the said indentures to the said Henry Manning the sheriff, to be by him certified and remitted to his Majesty in Chancery, and annexed to the said writ and returned to his Majesty as a good and true return to the said writ; which indenture and return was accordingly certified and returned to the King in Chancery; by which means the plaintiff was for a long time (*to wit*, twenty months) prevented from taking his seat as such burges in the said parliament, and was obliged to lay out a large sum (*to wit*, 2000*l*.) in order to obtain it.

The second count stated the antiquity of the borough, its right to send members, the last determination, the writ, its delivery to the sheriff, the precept and its delivery to defendants, and the election, as before. That plaintiff was then duly elected to serve as one of the burgeses for the said borough, &c. by a majority of such persons as then respectively had a legal right, according to and within the true intent and meaning of the said last determination of the House of Commons, to vote in the said election.

The third count stated the election as above, concluding that the defendants rejected and refused divers, viz. Forty persons, who then and there had respectively estates for life in burgage houses and burgage lands, lying within the said borough, each of which said several persons then
and

and there offered and tendered their votes for plaintiff; and which said persons, together with divers other voters who were by defendants admitted to vote, and did vote for plaintiff at the said election, and who were then and there legal voters, according to and within the true intent, &c. of the last determination, would have given plaintiff a majority of such legal votes at the said election; by reason of which rejection and refusal, plaintiff was prevented from having a majority of such legal votes at the said election: and although defendants well knew that plaintiff at the said election had a majority of legal votes according to the last determination, and then and there by reason thereof ought to have been elected, yet defendants caused such indenture as before to be made, certified, and returned, by which, &c. as before.

The fourth count was the same as the third, except that it stated that the persons rejected were persons who had a legal right to vote at the said election, according to and within the true intent and meaning of the said last determination.

The damage was laid at 10,000*l.* and the defendants pleaded Not guilty.

Mr. Piggot stated the necessity there was that returning-officers should discharge their duty according to law, and return those who were chosen by the majority of the electors. That the legislature had early taken into its consideration the abuses to which the discharge of the office had been found liable, and had in the reign of Henry VI. inflicted a penalty of 100*l.* on those who should make a false return; which being found ineffectual, was extended by the 7th and 8th Will. 3. chap. 7. to double the damages which the party injured should sustain, together with full costs of suit. But while returning-officers are thus punished for abusing the trust committed to them, their duty is pointed out by law, and they are directed to follow the last determination of the House of Commons on the right of election. That right

he stated to be so clear in Horsham, springing from what the best authorities had declared to be the original source of representation in this island, that since the determination in 1715, it had never been questioned, even by parliamentary adventurers, till the general election in 1790. The plaintiff on that occasion had engaged a learned counsel, of peculiar experience in such causes, to whose opinion he should have thought the bailiffs would have been glad to listen. That gentleman read to them the journals of 1715 and the statute on which the present action was founded; so that their conduct must be considered as wilful, being adopted after the full knowledge of the consequences that would follow. Owing to their return, Messrs. Shelley and Braddyll had sat in the House of Commons for nearly two sessions, and the plaintiff had been put to great trouble and expence during the three weeks which the committee took to investigate the case. He then stated the proceedings before the committee, and the determinations they had come to. Upon the whole, 2694l. 13s. 4d. had been expended; one half of which the plaintiff had paid; which sum he apprehended the jury would double, according to the act of parliament.

Evidence. The counsel for the plaintiff having proved that the borough was antient by old returns, produced the writ and return at the last election, and called the undersheriff to prove the issuing of the precept from his office. It was here observed that the writ directs the election to be made according to the form of the *statutes*, whereas the *Nisi Prius* Record had *statute*, of which variance the learned judge took a note. The office copy of the indenture of return had the names of Mr. Baillie and Lord William Gordon on it, but the person who examined it with the original, declared that in the original, these names were written on erasures: this was explained by producing, according to the act of parliament, a copy of the return-book, in which the clerk of the house had entered the names of all those
who

who were returned by writs returnable on the 12th day of August ; and also the amendments directed to be made in these returns by the House (a). By this it appeared that Messrs. Shelley and Braddyll had been first returned, but that the clerk of the crown had attended on the 12th of March and erased their names, and inserted those of Lord William Gordon and Mr. Baillie.

Mr. Ellis and Mr. Lee gave the same account of what passed at the election that they had before given to the Committee. The former said, That Drew Michel was bailiff in 1780, and had executed a return, which was proved by the original return itself, brought from the petty bag-office. He was asked by one of the jurymen, Whether Mr. Douglas sufficiently explained the *meaning* of the resolution to the bailiffs ? To which he answered, That he did not think that they possibly could have misunderstood it. The counsel for the defendants proceeding to enquire into the consideration given for the grants, their dates, and custody, the learned Judge observed, That the enquiry was immaterial to the present question. Mr. Witham, a clerk in the office of the Clerk of the Journals in the House of Commons, who had attended the Committee, brought with him the original minutes, and said they were taken by him, except upon the last day. Another person who attended on that day was called, and read the resolutions of the Committee, That Messrs. Shelley and Braddyll were not duly elected, and that Lord William Gordon and Mr. Baillie were : That the opposition of the Members returned was not frivolous or vexatious ; and that the bailiffs were reprehensible. All but the last resolution was reported to the House. The returning-officers had Mr. Chambre for their counsel. —The evidence for the plaintiff being closed,

(a) 7 & 8 Will. 3. c. 7. § 5.

Mr. Serjeant Bond, on the part of the defendants, said, That the question to be decided by the jury was not, what might have been the determination of the Committee on a late discussion: for though the Committee might differ in opinion with the bailiffs, it did not follow that the latter were in the wrong, but was, Whether or not the returning-officers had acted fairly and honestly, according to the best of their judgments, in a very difficult case? A Judge upon the bench might misconceive the law; but if he gave his opinion with integrity, uninfluenced by any corrupt motive, none but persons of a malignant disposition would think of punishing him for an involuntary error. The hardship, he observed, was greater on the bailiffs, who were compellable to act as returning-officers, because they were burgesses of the borough, and who, unfortunately for them, were to be involved in ruin by the contention of two powerful neighbours. After repeating the arguments for the necessity of the admission of the voters, and reading the passage from Carew, he asked, How it was possible, that the returning-officers could decide upon the legality of the forty-two deeds which were tendered to them at the poll? They could not administer an oath to the persons who offered to prove the execution of them, nor could those persons have been indicted for perjury if they had sworn falsely: they would indeed have had a rule to direct them, had the burgage-roll of 1611 been produced; but that was kept from them by the agents for the petitioners: notwithstanding which advantage, they themselves mistook the constitution of the borough, according to the decision of the Committee. The length of time which the Committee took to investigate the case, proved its difficulty; and as they reported that the petitions of Messrs. Shelley and Braddyll were not frivolous or vexatious, they must have been of opinion that each party ought to pay its own costs; but if any persons ought to repay the plaintiffs costs, he thought the loss should

should fall on the opposite candidates, and not on the bailiffs, who were unable to support it.

No evidence being offered by the counsel for the defendants, the learned judge addressed the jury nearly in the following manner :

“ This is an action brought by the plaintiff for a false return at the last general election. The nature of the action and of the defence made against it, have been well explained. The words of the statute which gives the action, prohibit *all false returns wilfully made* ; you are to enquire, therefore, 1st, Whether the return in question was false ? and, 2dly, Whether it was *wilfully* false ? As to the first point, no doubt can be entertained ; the only competent tribunal having decided the return to be false. On the second head, you should be convinced that the bailiffs felt at the time they were making it, that it was false ; less ought not to induce you to find a verdict against them. A false return is not enough to subject an officer to this action ; he must be proved to have returned falsely, knowing his return to be false. The statute on which the action is founded is of the greatest importance, both to the public and individuals. Vain would be the attempt to preserve the freedom of elections, if returning-officers were at liberty to disregard the right of voting ; but you will recollect, that the act is penal as well as remedial, and that the officer takes an oath to discharge his duty conscientiously ; which he must violate when he is guilty of making a false return. I shall not make many observations on the evidence, having observed with pleasure, that you have paid the greatest attention to it ; but as the Journals of 1715 were properly much relied on by the counsel on both sides, I shall read them to you.—I have read the Journals to you for this purpose, that you might see, Whether there is that obscurity in them that could mislead the defendants, or any man of plain sense. The following words are remarkable : “ But

“ the Sitting Members counsel insisted it was essentially
 “ necessary they should be presented by the Homage-Jury ;
 “ which was denied by the petitioners counsel.” Then
 follows the resolution, not mentioning the admission, about
 which was the dispute. You will consider, Whether this is
 a resolution which *be who runs must read*, and whether it
 can be mistaken without being wilfully misconstrued. Of
 this the conduct of the returning-officers at the poll will as-
 sist you in judging. Mr. Ellis said, That when the bur-
 gage-roll was produced, they were asked, Whether they
 meant to proceed according to the method that had been
 declared illegal in 1715 ? To which Drew Michel answered,
He did not care for that, he should proceed in the same manner,
as he knew no better rule to proceed by than the burgage-roll.
 The same question was put to the other bailiff, who acquiesced
 in the decision and return. [States the other Evidence.]
 You will judge of all this by the rule above laid down. As to
 what Drew Michel did when there was no contest in the bo-
 rough, I do not apprehend it can weigh much against him ;
 nor, on the other hand, can any argument be drawn from
 the re-delivery of the title-deeds ; for while the House of
 Commons declares this to be the law of parliament, it can-
 not be left to the consideration of a jury. If you should
 be of opinion that the plaintiff ought to recover, you will
 consider of the damages. I should have some doubt whe-
 ther the damages should be doubled by the court, or by
 you ; but that difficulty is removed by the understanding
 of the parties, that whatever you give, if you find for the
 plaintiff, shall be considered as the doubled damages. The
 bill of Messrs. Wallis and Troward you have heard has not
 been taxed : it seems admitted to be a fair bill as between
 the agents and the plaintiff ; but you are not absolutely
 bound by it. The Committee resolved, That the oppo-
 sition of Messrs. Shelley and Braddyll was not frivolous or
 vexatious, but that the bailiffs conduct was reprehensible ;
 but

but they might not think the return wilfully false, altho' they thought the bailiffs reprehensible. That question you must judge of for yourselves fairly, and without prejudice. The strong ground on which the defendants rest their case is, That the mistake was not wilful ; and they rely much on the long speeches and learned arguments of counsel. Did those mislead and puzzle the bailiffs, or did they act as they did under cover of those speeches ? If you are of opinion that it was a wilful false return, you will find for the plaintiff ; if you are of opinion it was a mistaken false return, you will then find for the defendants.

The jury found a verdict for the plaintiff for 800l. as double damages. The same jury were sworn to try the next action ; and the same verdict was agreed to be taken for Lord William Gordon, subject to a motion for a new trial, or arrest of judgment.

II.

THE C A S E

of the County of

S U T H E R L A N D.

The Committee was chosen on Friday the 9th of March, and consisted of the following Members:

Hon. Henry Hobart, *Chairman*,
Thomas Burry Bramston, Esq.
Nath. Brassly Halhed,
General Bruce,
William Nisbett, Esq.
Lieut. General Vaughan.
Francis Buller Yarde, Esq.
John Fenton Cawthorne, Esq.
Earl of Carysfort,
Sir James Stewart Denham, Bart.
William Crosbie, Esq.
Lord Geo. Thynne,
Hon. John Thomas Townshend.

John Crewe, Esq. *Nominee of the Petitioners.*
Gibbs Crawford, Esq. *Nominee of the Sitting Members.*

Petitioners,

1. Robert Home Gordon, Esq. of Embo.

COUNSEL,

Mr. Douglas, Mr. Luders.

2. Robert Bruce Æneas MacLeod, Esq. of Cadboll.

COUNSEL,

Mr. Graham, Mr. Dundas.

Sitting Member,

Lieut. General James Grant, of Ballendalloch.

COUNSEL,

Mr. Partridge, Mr. Tait.

THE
C A S E
Of the County of
S U T H E R L A N D.

THE petition of Mr. Gordon stated, “ That he and General Grant were candidates at the last election of a commissioner to serve in the present parliament for the county of Sutherland, which was held at *Dornock*, in the said county, on Wednesday the 14th day of July 1790 : That the said General Grant claimed to be, and took upon himself to act as, parliamentary præses of the meeting for the election, previous to the choice of a præses by the freeholders of the said county then met ; and not only himself voted in the choice of such præses, although he had no legal right to be upon the roll of freeholders of the said county, or to vote in such choice, but also admitted several other persons who had no legal right, either to be upon the said roll, or to vote in the choice of præses, to vote in such choice, by means whereof. Robert Bruce
Æneas

Æneas MacLeod obtained a colourable majority, and was by the said General James Grant declared to be duly chosen præses of the said meeting, although George Mackay, Esq. of Bighouse, was the person duly chosen præses by a majority of the freeholders then present, who had a right to vote in such choice: That the said General Grant and his adherents standing upon the said roll, were guilty of great partiality and injustice to the petitioner, not only by not striking the names of him the said General James Grant and of fundry other persons out of the roll of freeholders of the said county, and by taking and accepting the votes of such persons, as well in the choice of præses and clerk of the said meeting as in the election of a commissioner to represent the said county, although by law they were not entitled to have remained on the said roll of freeholders, or to have voted at the said election, but also by enrolling other persons as freeholders on the said roll, and taking and accepting their votes in the said election, and by striking the name of John Gordon, Esq. of Pulrossie, from the said roll, who had a legal right to continue thereon, and who would have voted, and did actually tender his vote for the petitioner: That the said General James Grant was guilty of bribery, &c. and was ineligible to serve in parliament for the said county, not being
a legal

a legal freeholder of the same: That the petitioner had the votes of a majority of the freeholders of the said county, who by law were entitled to vote at the said election; and that the said George Mackay of Bighouse, who was the legal præses of the said meeting for election, gave his casting or decisive vote in favour of the petitioner, in case in the event it should afterwards appear that the votes of the legal freeholders then present were equal: That the petitioner was therefore duly elected the commissioner to serve in parliament for the said county, and ought to have been returned as such by the said meeting, to the sheriff of the said county, and by him returned as such commissioner; but that the said General James Grant, by the means aforesaid and by various other undue practices, procured himself to be returned by the said sheriff as the commissioner chosen to represent the said county; and has actually been returned by the said sheriff as such commissioner, in prejudice of the said petitioner," &c.

The petition of Robert Bruce Æneas MacLeod, Esqr. of Cadboll, set forth, " That at the meeting for the election of a member to serve in parliament for the county of Sutherland, holden as above, the petitioner, General Grant and Robert Home Gordon, Esq. of Embo were candidates; and that the petitioner being
duly

duly elected by the votes of a majority of the real freeholders present, qualified and entitled by law to give their votes, ought to have been returned commissioner for the said shire ; that the meeting however having admitted the votes of several persons who were not legally qualified or entitled, nor possessed of such real freehold estates and qualifications as the laws of Scotland require, there was an apparent majority in favour of the said Lieut. General James Grant, who was declared by the said meeting to be duly elected and returned by the sheriff, whereas he ought to have returned the petitioner as duly elected : That the petitioner conceiving the said election to have proceeded contrary to law and to his prejudice, prays the House to take the premises into consideration, and to grant him such relief therein as to the House shall seem meet.

The petitions being read,

Mr. DOUGLAS,

On the part of Mr. Gordon, stated, That although he had now to oppose Mr. MacLeod as well as General Grant, yet the former gentleman, at the election, supported every one of those votes which he now wished to set aside. If therefore the committee should perceive that his attack upon the sitting member was collusive, they

they would not suffer it to injure the real interest of his client, but would decide that it was not more formidable now than at the contest for the election.—He stated, That at the election-meeting there were thirteen freeholders on the county-roll; but some having been then put on the roll, and others struck off, when the election commenced, there appeared to be sixteen; eight of whom voted for General Grant, three for Mr. Gordon, and five for Mr. MacLeod. But General Grant as he should contend being ineligible, because he had not a right to stand on the roll as a real freeholder, the election must be declared void, as it could not be contended that the votes given in his favour were absolutely thrown away. This would save the committee the trouble of entering into a discussion of the legality of the particular votes, to ascertain which must be an extremely difficult task. He observed, that representation was introduced into the Scottish parliament in the fifteenth century (*a*), but did not assume its present form till the act of 1681, in the reign of Charles II. By that act none were allowed to vote for commissioners for shires, or were eligible as such, but those infest in property or superiority, and in possession of a forty shilling land, of old ex-

(*a*) Act 1427. c. 101.

tent (a), or those infest in lands liable in public burthen for his Majesty's supplies, for 400 l. of valued rent. The lands affording these qualifications were required to be holden immediately of the king or prince. But, notwithstanding this law was general, an usage prevailed in *Sutherland* of allowing the vassals of subjects superiors to elect and be elected for that county, without any regard to the quantum, either of the old extent or the new valuation of their property. This custom was noticed by the act of the 16th of Geo. II. which, reciting the confusion that had arisen, from the undue multiplication of votes, and the claim of several persons to vote in respect of the property and superiority of the same lands, enacts, That no person shall have a right to vote unless he be infest and in possession of lands liable to his majesty's supplies, *at the rate of 200 l. Scots valued rent*, holden *either of the king, or of some peer or other person, or body politic or corporate, who by law are disabled to be a member of the House of Commons, or to vote in such elections*, or partly of the king and partly of such other person. In order to ascertain the number of voters, it was thought proper (though it has not answered the purpose of

(a) See the note to the Ork. and Zet. case, vol. i. p. 413.

avoiding litigation) that a roll should be made up in this as in other counties of Scotland, annually, at the Michaelmas-court of freeholders; and also at each meeting for the election of a member. At these times the roll is examined and *purged* of those who are thought to have no right to stand there, and increased by those whose titles have accrued to them since the last meeting; but whenever there are two candidates and any number of disputable votes, it generally happens that they differ about the choice of the præses of the meeting who has a casting voice, and that the losing party put in their claim for *their* præses in case it should afterwards appear that he was chosen by a majority of legal freeholders; and also protest against the admission or rejection of voters, whom they think improperly added to or struck from the roll. The act of 1681 gave a power of appealing from the decisions of the freeholders to the parliament or convention; and in case it should not be sitting at the time, allowed a summary application to the Court of Session (*a*), without any farther cita-

(*a*) And in case objections be made when a parliament or convention is not called, a particular diet shall be appointed by the meeting, and intimate to the parties contravening to attend the Lords of Session for their determination; who shall determine the same at the said diet summarily, according to law, upon application, without farther citation. *Char. II. Parl. 3. 1681. c. 21.*

tion than an intimation of the diet to the contraverting parties. But in the 16 Geo. II. the legislature found it necessary to limit more particularly this right of the Court of Session to revise the decisions of the court of freeholders, by declaring that any freeholder who thinks himself aggrieved by the admission or rejection of any other freeholder, may apply to the Court of Session by summary complaint, provided such application be made *within four calendar months* after the rejection or enrollment. If such complaint be not so made, the freeholder is to remain on the roll till a subsequent alteration of the circumstances of his title. He did not mean to contend, that if the four months were suffered to elapse, without any complaint being made, *the Court of Session* had any jurisdiction in these cases, but he certainly should contend that the same limitation did not operate on committees of the House of Commons. The Court of Session could only decide on the right of persons to stand on the roll: it is the peculiar province of committees to decide on the legality of their votes. Had the legislature meant that the limitation of four months should bind this tribunal, it ought to have said so expressly, in the same manner that it has declared that a determination of a committee on the right of election in a borough, unappealed from within a year, shall

shall be conclusive, not in this or that particular court, but to *all intents and purposes whatsoever*. He should therefore contend, that if any former Committee had thought itself bound by this limitation imposed on the Court of Session (*a*), the opinion was erroneous, and that there was no foundation for such a construction of the acts above mentioned, as to oust this supreme tribunal of a jurisdiction peculiarly its own. Upon that ground he proceeded to state two objections to General Grant's eligibility. 1st, That he never was a real freeholder of the county; and, 2dly, That *since* he was put on the roll, there had been such an alteration of the circumstances of his title, as ought to have induced the Court of Freeholders to strike him off the roll, and would entitle the Committee to enter on the question, even if they should be of opinion that they were bound by the limitation of four months, where an alteration of circumstances had not taken place. As to the first point, it was to be observed, that there were two noble Lords who possessed great property and superiority in this county, Lord Rae and the Earl of Sutherland. These, by the constitution of parliament, had no right to interfere in the election of members of the House of Commons; nor if

(*a*) See the Elgin case, 3 Lud.

they had, could they give more than one vote for their property, however large it might be; for the constitution has wisely considered that our freedom and civil rights are equally dear to us as pecuniary considerations, and that in them every voter has an equal interest. The noble Earl however, in 1757, by a contrivance which might then be thought ingenious, but which he trusted would now appear to be clumsy, made twenty-three votes from his own property, in a county where there were formerly but ten. The title by which these persons claimed the possession of estates enabling them to vote, was in the form of a *proper wadset*, by which in the law of Scotland the property is transferred to the possession of the wadsetter, who enjoys all the profits of it in consideration of a sum of money advanced to the owner, who is stiled the reverser, and who has a right to redeem the land whenever he repays the money. A proper wadsetter enjoys the profits of the land without accounting for them to the reverser, even if they should exceed the legal interest of the money advanced; but, on the other hand, should they fall short of it, he bears the loss, which distinguishes his right from that of an *improper wadsetter*, who holds the land merely as a pledge for his money; and who, if the profits exceed the legal interest, is obliged to account for the surplus, as he is entitled, on the

the other hand, to have the deficiencies made up to him. The former only is allowed to vote by the statute of 1681; but the Committee would perceive, that though in form an estate were pledged as a proper wadset, yet in reality it might be an improper wadset, from the understanding of the parties that exactly the legal interest, and no more, shall be detained by the wadsetter. It would appear that this was General Grant's case, from a letter written by his agent (*a*), claiming five per cent. upon 1200l. the consideration of the wadset, without taking the risque of the produce of the land. It was also a circumstance against the reality of the transaction, that this mode of raising money had not been used in Scotland for a century; but instead of it, heritable bonds are now granted, as being a more convenient security; and accordingly it will appear that Lord Sutherland did not want money in 1757, and that General Grant did not advance any; for the twenty-seven voters merely gave their bonds for the estates, by which means his Lordship became both borrower and lender. If the noble Earl had really wanted money, his land would have brought more in

(*a*) It appeared to be customary from this and the Stirlingshire case, for writers and agents in Scotland to deliver up even their confidential letters, when called upon in the course of a cause, before the Court of Session.

the market than the bonds of these gentlemen : so that the General would have as much difficulty in persuading the Committee now, that the transaction was not fictitious, as he experienced in persuading the Court of Freeholders to be of that opinion in 1757. He was then rejected ; upon which he appealed to the Court of Session, but the suit was allowed to *sleep*, as it is said, for eight years ; when, after a compromise of the contending parties, it was revived, and no opposition being made, the court, as of course, pronounced judgment in 1765, in an action of *wakening*, in the following words : “ The Lords
“ having resumed consideration of the foregoing
“ petition, and of the original petition and complaint and answers thereto, in respect the said
“ Major Hugh Mackay, of Bighouse, has withdrawn his objections, and that no objections
“ were offered by the other freeholders, the
“ Lords grant warrant to and ordain the sheriff-clerk of the shire of Sutherland, to add
“ the petitioners Col. James Grant, of the
“ 40th Regiment, and Lieut. Charles Gordon,
“ of Skelfich, to the roll of freeholders for electing a member of parliament for the said shire
“ of Sutherland, and decern.” This judgment in law refers back to 1757 ; at which time it must be taken, at least *against* the General, that he was in possession. But it will be found that

twenty years afterwards he was not in possession (*a*); which is surely such an alteration of circumstances as, upon the most rigid construction of the act of Geo. II. to give the freeholders and, *a fortiori*, the Committee an opportunity of scrutinizing his title, and of deciding whether or not it was such as to enable him to stand on the roll. That during this interval he was not in possession is apparent from these facts: That after Lord Sutherland's death, the curators of his infant daughter disposed by lease with warranty, of the very property in question, to Joseph Gordon for nineteen years, which will not expire till the year 1798. This was done without consulting General Grant; and the tenant is at present in possession, and till lately, paid the rents to Lady Sutherland. In 1789 General Grant's agent, who is also agent for the Sutherland family, is found proposing, by letter, that the rent shall in future be paid to General Grant? But where is the lease from the General to the tenant Gordon? or where is the power of attorney from the General to Lady Sutherland, to grant Gordon a lease for nineteen years? Can the mere subsequent payment of rent, if it could be proved, answer the presumption arising from

(*a*) It was admitted in the cause below, that General Grant was not in possession during this time, though it was said he had a right to possess.

these facts? Under the lease from Lady Sutherland, General Grant could not distrain for the rent in his own name; and her directions to the General to receive the rent, could only make him her bailiff or receiver. This conduct of the agent in 1789 shews, That in his apprehension General Grant had not then possession, and accordingly in 1788, Lady Sutherland grants by lease to Hugh Houston, for nineteen years, all the kelp-ware on a district of the sea-shore, which includes the coast of General Grant's estate. Here the possession of Lady Sutherland again appears, and there is therefore in 1789 the same contrivance to make the tenant attorn to General Grant, who is from this time to pay the minister's stipend as heritor, though till then Lady Sutherland had acted as such. The joint agent of the General and Lady Sutherland, is found about this time taking an opinion on the validity of the vote in his capacity of agent to the Sutherland family, and writing to a friend, that he had communicated the result of the opinion of the Lord Advocate to Lady Sutherland and Lord Gower. The interest was theirs, and not General Grant's. The opinion, as it ought to be, was expressed with caution; and in answer to the question how the votes might be rectified, declared, that they could only be made good by granting proper wadsets, and putting the wadsetters

fetters in full possession of their lands. Another mode however was adopted, which was, that those wadsetters who were on the roll and chose to pay up the consideration of the wadsets, at twenty years purchase of the rents, should be put in possession of the wadset-lands; but as this was a most defective cure of General Grant's original title, so neither could it be cured by an *eik* (a), or prorogation of the right of redemption till 1793, which Lady Sutherland had granted; for that being merely a confirmation of the original title, must stand or fall with it. It was on these grounds that the freeholders were moved to strike General Grant's name from the roll; but they refusing, an appeal was carried to the Court of Session. The Court were of opinion, that the judgment of 1765, ordering him to be put on the roll, could only be impeached by an action of reduction, which was accordingly brought, and is still depending. In the mean time the Committee will take cognizance of the question; for should they think themselves bound to admit the vote, this absurdity will follow: that they may declare a

(a) "It is a deed granted by the reverser, acknowledging the receipt of a farther sum borrowed from the wadsetter, and declaring that the wadset shall not be redeemable till the payment of the last debt, as well as the first."

Esq. Inst. p. 294.

vote to be good now, and in a few days learn that the Court of Session have ordered the voter to be struck from the roll of freeholders. If therefore the Committee should be of opinion, that in point of law General Grant's original title was defective, and that it was defectively cured, it would follow, that having no right to stand on the roll at the time of the election, he was ineligible, and that therefore the election must be declared void. For he did not apprehend that because the Court of Session, owing to there being no opposition, had ordered General Grant to be enrolled in 1765; that that collusive judgment could bind other electors who were not parties to it, or that the Committee would think themselves bound by the limitation of four months, when there were no express words in the act of the 16th of Geo. II. taking away their jurisdiction after that lapse of time.

EVIDENCE.

The minutes of the election-meeting being given in, the counsel for the petitioner, Mr. Gordon, wished to read the decree, ordering Colonel James Grant and Lieutenant Charles Gordon to be added to the roll of freeholders in 1765; which was opposed, on the ground that no evidence ought to be received tending to impeach his title, after he had been four months

on

on the roll. But to this it was answered, That this evidence in itself went to establish the General's title, and as such, ought not to be objected to by his counsel, they having relied much in the Court of Session upon his being enrolled in consequence of a decision of that Court. The Committee accordingly *determined to receive this decree as evidence.*

Mr. Luders then produced "the proof in the complaint, Robert Home Gordon, Esq. against Lieut. General James Grant;" when, after a short argument in which Sir John Macpherson's case was quoted for the petitioner, and the late case of Elliot and Pringle (*a*) for the sitting member, the counsel and agents being directed to withdraw, the Committee deliberated and resolved,

"*That the evidence offered to be produced for the petitioner, Mr. Home Gordon, is not admissible:*" which being communicated to the parties at the rising of the Committee, Mr. Douglas next day made the following proposition:—"The counsel for the petitioner, Mr. Gordon, offer to produce evidence to shew that the sitting member was not in possession of the estate on which he was enrolled at the time of the last election; which they contend was an alteration of circumstances since his enrollment, of such a nature, that

(*a*) See these Cases in the Appendix, No. 1 and 2.

he ought to have been struck off the roll ; and was therefore ineligible.”

The Committee having deliberated on this proposition, resolved *unanimously* (as the minutes bear) :

“ *That it is the opinion of this Committee, that no evidence shall be admitted to impeach the right of voting of any person at the Sutherland election, admitted on the freeholders roll by decree of the Court of Session of Scotland, who has remained on such roll for many years, and where no alteration of his circumstances has been allowed by the freeholders, at a subsequent Michaelmas-meeting, or meeting for election, as a sufficient cause for striking him off the roll (a). This resolution being*
commu-

(a) This resolution of the Committee may perhaps appear to some, to pay too great a deference to the decisions of the Court of Freeholders ; for should a majority of these reject all evidence of an alteration of circumstances, even where it could be clearly proved, such a case seems to come within the words of the determination. But I apprehend that, upon an attentive consideration of General Grant's case, it will appear fully to justify this resolution in his favour. It had been urged against him in the Court of Session, that the judgment ordering him to be enrolled was collusive ; but the Court was of opinion, that the judgment could only be questioned by an action to reduce it ; and accordingly an action of reduction was instituted by General Grant's opponents. To this view of the argument, the words of the resolution, “ *Who has remained on the roll*
for

communicated to the counsel, Mr. Douglas said that it compelled his client to withdraw his pretensions

for many years" apply ; for that judgment not having been questioned for so *many years*, it was fair to argue that the Committee ought not to question it now (merely because an action of reduction had been lately instituted) upon the same principle that Committees will not try a claim to the freedom of a corporation, where the person claiming had sufficient time to have had his right determined by the Courts of Law, or admit evidence to impeach the rateability of a person who has actually been rated so long, that an appeal might have been entered and decided before the meeting of the Committee. As to the other point, That there was an alteration of the circumstances of General Grant's original title, which required the Committee to decide on his present right to stand on the roll, it is necessary to consider the proceedings in the Court below. In the Court of Session it was chiefly insisted on against General Grant, that he never was in actual possession of his lands, not even at the time of the election. *Memorial of the 24th of February, 1791, for the complainers.*—On the other hand, for the Respondent it was stated, " That, in order to save unnecessary
" trouble and expence to both parties, he was willing to
" admit, and which indeed he never controverted, that for
" seven years preceding Whitsunday 1789, though he had
" the right to possess, he did not possess the wadset-lands
" by actually levying the rents thereof, which were received
" by the noble pursuer, and applied in extinction of the
" interest of the wadset sum. By this admission, the subject of proof (it was said) becomes limited to this single
" point, whether the respondent has or has not been in
" possession of his wadset-lands since Whitsunday 1789,
" and particularly at the time of exercising his right of
" freehold,

tensions to the seat, and that therefore he should give the Committee no farther trouble. Mr. Dundas,

“ freehold, at the meeting for election of a member of
 “ parliament for the county of Sutherland, on the 14th of
 “ July last? and has or has not continued in possession ever
 “ since? The respondent does aver that he has in every
 “ view been in the actual possession for crop 1789 and
 “ 1790, and that he has levied the rent of those years, and
 “ applied them to his own use.” This admission however,
 was considered as not being sufficiently full, and was not
 accepted; and the complainers went at large into the
 evidence they had to adduce.

On the 5th of July 1791, the Court pronounced the following interlocutor: “ The Lords having advised this petition with the answers thereto, they find that the petitioners are not barred from stating the objection that
 “ General Grant’s qualification is nominal and fictitious,
 “ and allow them to give in a condescendence of such facts
 “ and circumstances as they are willing to prove in support
 “ of that allegation, to be put into the boxes to-morrow.” This condescendence was accordingly given in, and proofs were had on both sides. From this decision, it would seem that the Court was of opinion, That General Grant’s being out of possession after the judgement in 1765, was such an alteration of the circumstances of his title, as it stood at the time of his inrollment, that it might be investigated by the freeholders and the Court of Session; except we suppose that the decision was governed by the same principles that were said to have induced the Court to decide other cases contrary to that of *Elliot* and *Pringle*. But by the ultimate decision in General Grant’s favour, which was given before the case of *Elliot* and *Pringle* was argued at the bar of the House of Lords, the Court must have been of opinion that
 General

Dundas, on the part of Mr. MacLeod, also said, That he had no evidence to offer to the Committee, his intention being to bring the merits of Macleod's petition forward, only in the event that General Grant was declared ineligible. Upon this,

Mr. PARTRIDGE

said, That as both his friends had acknowledged that they had no admissible evidence to produce, he must recall to the memory of the Committee the provision of the act of the 28th of Geo. III. which enabled them by a special report to award costs to his client, who had been put to great expence and inconvenience, by

General Grant was actually in possession at the time of the election, and that in point of law it was immaterial to the goodness of his title, whether he was or was not in possession during all the intermediate time, provided he were in possession, or rather had a right to stand on the roll at the time of his enrollment, and at the time he gave his vote. The Committee perhaps, drawing this plain inference from the decision of so competent a court as the Court of Session, might not be willing to enter on the discussion of a difficult point of Scotch law, merely because the decision was appealed from (a), when so *many years* had elapsed, during which the parties might have had the dispute terminated by an appeal to the dernier resort.

(a) The judgment of the Court of Session was appealed from; but the matter never came the length of a case.

having a charge brought against him which was totally unsupported by legal evidence. As to Mr. MacLeod's petition, he apprehended there could be little doubt that it came within the intention of the act ; but he should contend that the act extended also to Mr. Gordon who had brought forward a specific charge against General Grant, in which he had failed, and who on that account would have had the costs of the trial to pay if he had sued in the courts of law. It could not even be said in his defence that he had a probable cause to hope for success, considering the number of years during which General Grant had remained on the roll, unquestioned by the freeholders at the Michaelmas head-courts. Mr. Gordon's petition was on that account frivolous ; and it was vexatious, because its object being indirect, namely, not to seat the petitioner but to remove the sitting member, it ought to have been supported by the clearest evidence. The Committee who sat on the Bodmin case last session were of this opinion. The petition in that case was founded on his opinion, which, he was sorry to say, in that instance was not correct. The mistake being discovered, it was argued before the Committee, that the opinion of a Gentleman at the bar was a sufficient justification for petitioning the House ; but the Committee thought that the petitioner ought

ought to rest on the merits of his case, and that if he had erred in a point of law, he alone ought to suffer: they accordingly voted the petition to be frivolous and vexatious (*a*). Another Committee in the late case of Colchester came to a similar determination, the petitioner having mistaken the law as to the ineligibility of Sir John Jackson, on account of a supposed pension. How far that determination was satisfactory to the public he could not say; but a strict analogy was observable between it and the doctrines of the courts of law, where a party imagining himself to be right in point of law, but proved to be mistaken, always pays the costs of the trial. He concluded with observing that Mr. Douglas's speech was now excluded from the consideration of the Committee, and that the mode of attack brought forward against General Grant, had been decided to be totally inadequate to obtain the end proposed.

On the other side,

Mr. LUDERS

said, That as this was an application to the discretionary power of the Committee, their report must be founded upon all the circumstances of the case taken together; they would therefore

(*a*) See the Appendix, No. 3.

attend to the current opinion of the law of Scotland at the time the petition was presented. The Court of Session then held a different doctrine from that of the case of Elliot and Pringle; and in General Grant's case, allowed an objection to be brought against his title long after the expiration of the four months. It was therefore competent to any lawyer in Scotland, to have given an opinion in favour of the prayer of his client's petition. The case of Elliot and Pringle was finally decided within ten days last past: had it been decided in his favour he would have succeeded with the Committee. This added to the consideration that General Grant's cause was at present open before the Court of Session, and might be decided against him, would convince the Committee that there was a just ground for petitioning the House of Commons. He denied that General Grant was on the roll for a longer space of time than since 1789; for he himself had admitted, that he was out of possession for many years before: Mr. Partridge had therefore failed in that most material point, the length of time during which his client had been entitled to vote. Neither had it been stated that any witnesses were brought from Scotland, which might have increased the expence of the trial; these were unnecessary, as all the evidence relating to the qualification was

was in writing. On the frivolity of the petition he observed, that this differed from the Bodmin case, where the counsel was under the necessity of stating from the first, that he had no evidence to offer; and as to its being vexatious, it would not have deserved that epithet, had the case of Elliot and Pringle been otherwise decided. It was not for him to say, whether the determination in the case of Colchester had given complete satisfaction; but the Plymouth Committee which sat in this Session, did not come to a similar resolution, though the petitioner there gave up the contest, after having maintained it during three days. He left the matter therefore with the Committee, and should only observe, that Mr. Gordon's petition was presented at a time when every lawyer in Scotland would have advised it, and when the evidence now offered to the Committee had been received by the Court of Session. This precluded all idea that the petitioner was actuated by the malicious motive of merely wishing to distress the sitting member.

Mr. Luders having finished,

Mr. DUNDAS,

On behalf of Mr. MacLeod, said, That his client had waited till Mr. Gordon actually presented his petition, as he could not think his

intention of petitioning serious, he having only three votes to oppose to so great a majority on the other side (*a*). When however he did come forward, he was obliged to assume the appearance of an antagonist to the sitting member, or

(*a*) The Session of 1790 commenced on the 25th day of November. On the 15th of December, notice being taken in the House that in the list of the names of the members returned to serve in the present parliament, which was delivered to the clerk of the House by the deputy-clerk of the crown in chancery, Lieut. General *James*, of Ballendalloch, was certified to be returned as the commissioner to serve in parliament for the shire of Sutherland; a motion was made and the question being proposed, that the deputy-clerk of the crown do attend the House immediately, with the return for the said shire of Sutherland, the House was moved, that the entry in the Journal of the House of the 28th day of November 1761, in relation to the return of Richard, Earl of Tilney, in the kingdom of Ireland, for the borough of Malmesbury, in the county of Wilts, might be read; and the same being read, and the deputy-clerk of the crown being ordered to attend with the return for the said shire of Sutherland; and it appearing to the House, by the information of one of the members of the House, who was present at the last election of a commissioner for the said shire, that Lieut. General *James Grant* was the person elected, and intended to be returned; it was *ordered*, That the said return be amended, by inserting the word "*Grant*" after the word "*James*;" and that leave be given to petition the House, complaining of the said election or return, within fourteen days next. Mr. Gordon's petition was presented on the 17th of December, and Mr. MacLeod's on the 23d. *See the Notes of these dates.*

his

his petition would not have been received by the House. Had he not petitioned, the election might have been declared void, and Mr. MacLeod would not have obtained the seat, which he conceived he would have been entitled to, had General Grant been declared ineligible. The Committee would therefore see that his client was in fact dragged forward by Mr. Gordon; who ought to bear the blame of both petitions, if any was imputable to them.

Mr. PARTRIDGE, in reply,

said, That whatever were the motives which influenced the petitioners, this was clear, That General Grant had been obliged to defend himself with considerable expence against both of them. With regard to Mr. MacLeod's fears, he apprehended that they were groundless, as the Committee would not have declared Mr. Gordon duly elected till they had disallowed the five votes of Mr. MacLeod, who should have presented a petition, disclosing the circumstances of the case, and praying to be admitted a party to defend the seat. Neither could the doubt that was said to be entertained of the law of Scotland, afford the petitioners much excuse for their conduct; for though there were a few late decisions the other way, he believed

it was the general opinion of Scotch lawyers, that the four months were a sufficient defence against any subsequent attack, except on the ground of an alteration of circumstances. Of this he must deny that there was any evidence before the Committee; for though it had been admitted by counsel that the printed proceedings in the Court of Session should be given in, if the Committee should think the evidence admissible, it had never been allowed that the evidence ought to be received, but on the contrary, he had a resolution in his favour rejecting it entirely. The petitioners must also have been aware that General Grant had frequently represented the county; he had also taken the oath of possession, which in its terms was most comprehensive, and peculiarly calculated to catch and detect every species of nominality. As to the case of Plymouth, perhaps Mr. Luders did not know what he did; namely, that upon the poll there was only a majority of two for the fitting member, and that the uncertainty of the contest made the parties agree, that if the petitioner would withdraw his opposition, the fitting member should not move to have the petition reported frivolous or vexatious. As the circumstances of that case differed from the present, the precedent was not applicable on this occasion.

On

On Tuesday the 13th day of March, the Chairman informed the House that the Committee had determined,

That Lieutenant-General James Grant is duly elected a Commissioner to serve in this present parliament for the county of Sutherland:

That the petition of Robert Bruce Æneas MacLeod, of Cadboll, Esq. did appear to the said Select Committee to be frivolous and vexatious:

That the petition of Robert Home Gordon, of Embo, Esq. did not appear to the said Select Committee to be frivolous or vexatious: and,

That the opposition of the said Lieut. General James Grant to the said several petitions, did not appear to the said Select Committee to be frivolous or vexatious.

And the said determinations were ordered to be entered in the Journalsof the House (a).

(a) See the votes of this date.

Appendix.

(No. 1.)

IN THE HOUSE OF LORDS.

Sir William Forbes of Craigievar, Bart. George Skene of Skene, Esq. Lieutenant-General Robert Horn Elphinston of Logie, and others, freeholders of the county of Aberdeen, *Appellants*.

Sir John Macpherfon, Bart. late Governor-General of Bengal, *Respondent*.

THE APPELLANTS CASE.

THE introduction of nominal or confidential voters into the different counties throughout Scotland, for the purpose of increasing the political influence of peers, and other owners of great estates, has long been complained of, not only by the real and substantial freeholders, but by all who wish to see the purity of that branch of the constitution which relates to the election of members of parliament preserved entire; but of this evil it is believed no county can afford a more remarkable instance than the county of Aberdeen, where, by parcelling out the superiority of lands contained in one charter, a noble Duke has attempted to add to the roll of freeholders one wadsetter and twenty-four life-renters, in consequence of an equal number of dispositions and assignations (all dated on one day, the 26th of September 1786) and of as many instruments of feisin, all dated in like manner the 27th, and registered the 29th

29th of the same month. The whole of these pretended titles were made by the order and at the expence of the noble Duke, and the business conducted by his ordinary agent, without any communication with the grantees, other than some of them being perhaps asked previously, if they would accept of a qualification upon his Grace's estate. The deeds, when engrossed at Edinburgh, were blank in the names of the grantees, and remained so till executed at Gordon Castle.

For all these confidential voters, claims were lodged in due time, in order to their being enrolled at Michaelmas 1787: but these claims were afterwards withdrawn by the direction of the noble Duke and his agents, without any communication with the claimants; and new claims were again brought forward at Michaelmas 1788, without any authority from the claimants; all of which, except two, were signed for them by a learned gentleman, one of the noble Duke's counsel.

One of these qualifications was made in favour of the respondent, when presiding in the Supreme Council of Bengal; and for him, as a claimant, the following titles were produced:

1. Charter of resignation in favour of Alexander Duke of Gordon, his heirs and assignees, of the lands, lordships, and other therein mentioned; comprehending *inter alia*, the lands and barony of Touch, Cluny, and Midmar, of which the following lands are parts and portions, viz. all and whole the lands of Findlettree, with the pertinents therein specified; as also the town and lands of Tillymair, Tilliegownie, and Hayboggs, with the mill, mill-lands, and astricted multures of Tillymair, and whole pertinents of said lands, all lying within the parish of Touch, and sheriffdom of Aberdeen; which charter bears date the 7th of August 1786.

2. Disposition by the said Alexander Duke of Gordon, of the lands and others before mentioned, in favour of the
respondent

respondent in life-rent, containing an assignation to the said charter, and precept of feisin therein contained, so far as respects the lands and others above mentioned ; which disposition is dated the 26th of September 1786.

3. Instrument of feisin following upon the said charter and disposition, dated the 27th, and recorded in the particular register of feisins kept at Aberdeen, upon the 29th of the said month of September 1786.

To this claim the appellant, George Skene, stated the following objection : “ That the qualification therein described, upon which the said Sir John Macpherson claims to be inrolled as a freeholder of the county, is nominal and fictitious, confidential, and created for the sole purpose of enabling him to vote ; and that, in defraud of the statute of the seventh of Geo. 2. and of the other laws regulating the qualifications of freeholders entitled to vote in the election of a member to serve in parliament for this county.”

To the objection it was answered by the Duke of Gordon’s agent, who attended the meeting as on behalf of the respondent, and the rest of the twenty-five claimants, “ That the objection is without foundation, and arises merely from presumption : that the claimant is a real and true purchaser of the superiority, for a price actually paid ; and that therefore it would be doing an injustice to deprive him of the benefit of that purchase, as no objection has or can be stated to his titles to be inrolled.” And the majority of the freeholders being satisfied with this answer, the respondent was admitted to the roll.

Of this judgment the appellants complained to the Court of Session, under the authority of the statutes in that behalf made and provided, stating the facts herein abovementioned ; and in the course of the proceedings they first contended, that *ex facie* of the transaction, it evidently appeared, that it never was the object of these titles to convey to
the

the respondent any real or substantial estate, or even to afford him an independent freehold qualification; but that, on the contrary, they were fraudulently devised for the sole purpose of increasing the influence of the Duke of Gordon in the election of a representative of the county in parliament; and in the next place, they, in farther corroboration of their objection, averred the following particulars, and insisted that the respondent should confess or deny the truth thereof.

“ *1mo*, That the conveyance of the lands contained in
“ the respondent’s titles, was made without his previous
“ consent or knowledge; at least, that the respondent was
“ solicited by the noble Duke, from whom he derives his
“ right, to accept of a freehold qualification. *2do*, That
“ the expence of making out the title-deeds was paid by
“ his Grace. *3tio*, That these title-deeds were not delivered to the respondent before his inrollment, or at any
“ time in his possession previous thereto. *4to*, That when
“ he was informed of the conveyance, or was prevailed
“ upon to accept it, he did not mean or think himself called upon to defray the expence of defending his title in
“ this court, or elsewhere. *5to*, That he did, when he accepted said conveyance, and still does, consider himself as
“ in honour bound to vote for the candidate who may be
“ patronized by the noble Duke, and to renounce his freehold qualification at his Grace’s pleasure.”

The respondent put in his answer, not denying the facts stated in the complaint. He set forth, That the estate he had acquired from the noble Duke yielded 16s. 8d. a year, and that he had purchased it at a fair and adequate price, which he declined to name, avowing that it was for the express and special purpose of enabling him to vote for a member of parliament—that was his object. Had it not given him that right, he probably would never have acquired it; and were that right taken away, he would care very little

little what became of the superiority. But the respondent endeavoured nevertheless to maintain, That a life-rent of superiority afforded a good freehold qualification ; that his titles were not nominal or fictitious, because he was possessed of every thing they contained, and that the court had no authority to examine him upon, or to oblige him to confess or deny, the truth of the circumstances stated in the complaint, either in whole or in part.

Of this date, the court, by the narrowest majority, pronounced the following interlocutor : The lords having advised this petition and complaint, with the answers thereto, replies, and duplies ; they find it incompetent to put the questions to the respondent proposed by the complainers : repel also the objection of nominal and fictitious to the respondent's qualification ; and therefore dismiss the complaint, *affoilzie* (*i. e.* acquit) the respondent, and decern."

The appellants conceiving themselves to be aggrieved by this interlocutor, have appealed from the same to your Lordships, and humbly hope that it will be reversed, varied, or amended, for the following, or other REASONS :

I. When a great proprietor, whether peer or commoner, parcels out the superiority of his estate amongst a number of confidential friends, for the avowed purpose of introducing them into the roll of freeholders, every one must see that he can have no object in view but to increase his own influence, or, in other words, his power of voting ; it being the same thing whether he exercises that power by himself, or by others appointed by him. A system so obviously inconsistent with the constitution (which allows no vote to peers, and only one to commoners, however large their estates) can have no foundation in law.

By the original constitution of Scotland, all the immediate vassals of the crown were obliged without distinction to give attendance in parliament ; but in process of time they became

became so numerous, and the estates of some of them were so small, as to render it necessary to relax from the rigour of the ancient law. Statutes accordingly passed in the reigns of James 2. and James 4. of Scotland, dispensing with the attendance of those whose estates were under a certain extent; and at last, in 1587, a material alteration took place, by the introduction of representatives from each county; for the election of whom, a statute passed in that year ordained, “ That all the freeholders of the king, under the
“ degree of prelates and lords of parliament, be warned
“ by proclamation to be present at the chusing of the said
“ commissioners; and none to have vote in their elections
“ but such as have forty shillings land in free tennandry
“ holden of the king, and have their actual dwelling and
“ residence within the same shire.”

Some questions having arisen with regard to the right of voting: to prevent these for the time to come, it was enacted by the act 1661, cap. 35. “ That besides all heritors
“ who hold a forty shilling land of the King’s majesty *in*
“ *capite*; that also all heritors, life-renters, and wadsetters,
“ holding of the King, and others who held their lands
“ formerly of the bishops and abbots, and now hold of the
“ King, and whose yearly rent doth amount to ten chalders of victual, or 1000l. (all feu-duties being deducted)
“ shall be, and are capable to vote in the election of commissioners of parliament, and to be elected commissioners to parliament, excepting always from this act all
“ noblemen and their vassals.” The 1000l. here mentioned is Scots money; that is, 83l. 6s. 8d. sterl. and shows that a tolerable estate was then required to entitle a person to so important a privilege.

To discover whether an estate on which a vote was claimed, yielded ten chalders of victual, or 1000l. Scots of free rent, might often be attended with difficulty. Many questions might still have arisen, and much time been consumed
in

in parliament by trying the merits of controverted elections. The legislature therefore passed a new act in 1681, which, after reciting the great delay in dispatch of public affairs in parliament and convention of estates, occasioned by the controverted elections of commissioners from shires, laid down a variety of rules for regulating these elections in time to come.

By this statute it was enacted, " That none shall have
 " vote in the election of commissioners for shires or stewar-
 " tries, which have been in use to have been represented
 " in parliament and conventions, but those who at that
 " time shall be publicly infeft in property or superiority,
 " and in possession of a forty-shilling land of old extent,
 " holden of the king or prince, distinct from the feu-duties
 " in feu-lands; or where the said old extent appears not,
 " shall be infeft in lands liable in public burden for his
 " majesty's supplies for 400l. of valued rent, whether kirk-
 " lands now holden of the king, or other lands holding feu-
 " waird or blanch of his majesty as king or prince of Scot-
 " land: and that apprisers or adjudgers shall have no votes
 " in the said elections during the legal reversion; and that
 " after the expiring thereof, the appriser or adjudger first
 " infeft, shall only have vote, and no other appriser or ad-
 " judger coming *in pari passu* till their shares be divided,
 " that the extent of the valuation thereof may appear; and
 " that during the legal, the heritor having right to the re-
 " version, shall have vote; and likewise proper wadsetters
 " having lands of the holding, extent, or valuation foresaid;
 " and that apparent heirs being in possession by virtue of
 " their predecessors infeftment of the holding, extent and
 " valuation foresaid, and likewise life-renters and husbands
 " for the freeholds of their wives, or having a right to the
 " life-rent by the courtesy, if the saids life-renters claim
 " their vote, otherwise the fiar shall have vote; but that
 " both fiar and life-renter shall not have vote, unless they
 " have

“ have distinct lands of the holding, extent, or valuation
“ foresaid ; but that no person infeft for relief or payment
“ of sums shall have vote, but the granters of the saids
“ rights, their heirs or successors.”

This statute appears to have been anxiously framed to exclude every species of unsubstantial qualifications, such as adjudications during the legal, improper wadsets, infeftments in security, and titles of any kind without possession ; or in other words, naked titles, from which no actual benefit accrued. In short, the idea of the legislature then was, to confer the privilege of voting upon those who at the time had the most substantial interest in the lands : for this reason the life-renter was preferred to the fiar ; the proper wadsetter and the adjudger, after the expiration of the legal, to the reverser ; and it was upon the same principle that the owner of the land was preferred to the improper wadsetter, the adjudger during the legal, and the creditor who was infeft for security of the debt due to him.

It is true indeed that the right of voting, as formerly, was still confined to those who held their lands immediately of the crown ; and as life-renters were preferred to fiars, it has been maintained that a life-renter of a bare superiority, yielding him no earthly profit, is entitled to vote both under the letter and under the spirit of this statute. It however had no such qualifications in view. It was common in those days, and is so still, to create life-rents and fees in family-settlements : for instance, a father settling his estate upon occasion of his eldest son's marriage, divests himself of the fee by conveying it to his son, and the heirs of the marriage, with the burden of his own life-rent ; or, in other words, reserving to himself the enjoyment of the rents during his life. It is plain, that in such a transaction the father continues to have a very beneficial interest in the estate ; and it is most just that the preferable right of voting should likewise continue with him. Such instances of

real and substantial life-estates, were plainly what the act 1681 had in view, and not that sort of imaginary life-rent of naked superiority, with a blench or elusory duty, and all the casualties taxed or discharged, which the invention of modern times has raised up for the mere purpose of multiplying fictitious votes in defraud of the law, and which can serve no other end or object whatever. Indeed the word possession, when distinguished from title, can mean nothing else than the actual receipt of profits out of the estate.

On this footing matters rested till the union of the two kingdoms; and as by the twenty-second article of that treaty, it was provided, "That the sixteen peers, and
 " forty-five members of the House of Commons, shall be
 " named and chosen in such manner as by a subsequent act
 " in this present session of parliament in Scotland shall be
 " settled; which act is hereby declared to be as valid as if it
 " were a part of and ingrossed in this treaty;" so by an act passed in the same session 1707, cap. 8. it was enacted,
 " That none should be capable to elect or be elected to re-
 " present a shire or borough in the parliament of Great
 " Britain for this part of the united kingdom, except such
 " as are now capable, by the laws of this kingdom, to elect
 " or to be elected as commissioners for shires or boroughs
 " to the parliament of Scotland."

No person had then conceived the idea of arrogating to himself more votes than one, by giving fraudulent qualifications to confidential friends, who were to vote according to his directions; but as soon as parliamentary interest came to be looked to as an object of great consequence, the ingenuity of lawyers was set to work to contrive methods by which the law might be evaded, and occasional advantage obtained by making unfair votes. There accordingly appears in the Journals of the House of Commons, the following entry of the 13th February 1710: "The question
 " being put, that Homer Maxwell, James Grierson, Robert
 " Grierson,

“ Grierfon, Lancelot Grierfon, ————— Grace of
 “ Glen, and James Brown, who were infeft of eftate, re-
 “ deemble upon paying a rofe-noble, had a right to vote
 “ in the election of a commissioner for the fhire of Dum-
 “ fries: it paffed in the negative.” Here was a fpecies of
 right which feemingly conferred a fubftantial eftate during
 the not-redemption; yet being defeafible at pleafure for an
 elufory fum, and therefore not of the nature of a proper
 wadfet, it was condemned, and found illegal.

The legislature foon after interpoſed, by a declaratory
 act, reciting in the preamble, “ That of late feveral con-
 “ veyances of eftates had been made in truſt, or redeem-
 “ able, for illuſory fums, noways adequate to the true va-
 “ lue of the lands, oh purpoſe to create and multiply votes
 “ in elections of members to ſerve in parliament for that
 “ part of Britain called Scotland, contrary to the true in-
 “ tent and meaning of the laws in that behalf,” and enact-
 ing, *inter alia*, “ That it ſhould be lawful to or for any
 “ of the electors preſent, ſuſpecting any perſon to have his
 “ eftate in truſt, for the behoof of another, to require the
 “ following oath to be taken:” “ I *A. B.* do, in the pre-
 “ ſence of God, declare and ſwear, that the lands and eftate
 “ of ———, for which I claim to give my vote in this
 “ election, are not conveyed to me in truſt, or for
 “ the behoof of any other perſon whatſoever; and I do
 “ ſwear, before God, that neither I, nor any perſon
 “ to my knowledge, in my name, or by my allowance,
 “ hath given, or intends to give, any promiſe, obligation,
 “ back-bond, or other ſecurity for the diſpoſing or the
 “ conveying the ſaid lands and eftate, any manner of way
 “ whatſoever; and this is the truth, as I ſhall answer to
 “ God.”

In proceſs of time, new devices were fallen upon to create
 falſe votes, contrary to the ſpirit of the law; and, in order
 to check ſuch practices, the legislature paſſed an act direct-

ing a new oath, in more broad and comprehensive terms, to be taken by every freeholder, at the desire of any other freeholder, at a Michaelmas-meeting, or meeting for election. It is as follows: "I *A. B.* do, in the presence of God, declare and swear, that the lands and estate of ———, for which I claim a right to vote in the election of a member to serve in parliament for this County (or Stewartry) is actually in my possession, and do really and truly belong to me, and is my own proper estate, and is not conveyed to me in trust, or for or in behalf of any other person whatsoever; and that neither I nor any other person, to my knowledge, in my name, or on my account, or by my allowance, hath given, or intends to give any promise, obligation, bond, back-bond, or other security whatsoever, other than appears on the tenor and contents of the title upon which I now claim a right to vote, directly or indirectly, for the disposing and reconveying the said lands and estate, in any manner of way whatsoever, or for making the rents or profits thereof forthcoming, to the use or benefit of the person from whom I have acquired the said estate, or any other person whatsoever; and that my title to the said lands and estate is not nominal or fictitious, created or reserved, in order to enable me to vote for a member to serve in parliament, but that the same is a true and real estate in me, for my own use and benefit, and for the use of no other person whatsoever: and that is the truth, as I shall answer to God."

No person who compares the two oaths, and reflects that the one was abolished to make way for the other, can possibly entertain a doubt that a more complete discovery was intended by the latter than by the former; the first being merely to guard against latent trusts, whereas the object of the second was likewise to strike against another species of false votes, described in the latter part of the oath, where nothing

nothing was truly meant to be given away but the mere shadow of a right, for the purpose of voting, and where of course no special deed of trust or defeasance was necessary. The signification of the word *nominal* must be obvious to every person; the name or appearance of a right, and the substance of it, standing in direct opposition to one another: the meaning of the word *fictitious* is equally plain; and no two words in the English language could have been chosen more applicable to the practice of splitting superiorities, not with any real purpose of selling them to fair purchasers, or giving any thing which a purchaser would accept, but for the plain purpose of creating confidential votes, in order to support the political influence of the grantors. The claimant is obliged, if required, to swear not only that he does not hold the estate anywise in trust, but farther, "That his title is not nominal and fictitious, created in him in order to enable him to vote for a member to serve in parliament; but that it is a true and real estate in him, for his own use and benefit, and for the use of no other person whatsoever." The respondent's argument that these words are superfluous, and tend to discover or guard against nothing that was not done by the preceding part of the oath respecting trusts, conveys a reflection on the legislature, indecent and not to be suffered. The intention evidently was to check, as far as the solemnity of an oath and the pains of perjury could, every illegal device whereby another person was substituted in the place of the real owner, who by such means attempted to acquire an unconstitutional influence, to vote by proxy, and thereby in truth to take to himself at pleasure as many votes as his estate afforded qualifications. The oath is not itself the law, as has been often argued, but it is declaratory of what was the law before; for the legislature could never make a person's enrollment or vote depend on his swearing to circumstances not legally essential.

That the respondent's is one of those unfair or fraudulent

qualifications, the appellants apprehend to be sufficiently established by the real evidence of the case. The carving no fewer than twenty-five votes out of the lands contained in one charter, the dispositions from the noble Duke to all these intended voters, and the instruments of feisin upon those different dispositions being all of the same date, and registrate on the same day; the dispositions and feisins being blank in the names of the grantees when they were written out by the Duke's agent at Edinburgh, and remaining so until they were carried to Gordon Castle, and executed; the withdrawing of the claims in 1787, by the direction of the Duke and his agents, without any communication with the claimants themselves; the respondent's avowal that the conveyance to him was given and taken with a view to the vote only; and the total incredibility that his Grace would have granted, or that the respondent would have accepted of such a shadow of an estate for any other purpose than that of constituting a confidential qualification, in consequence of which the respondent must consider himself bound in honour to vote according to the directions he shall receive from his author, or to renounce his life-rent whenever he shall be desired so to do, must afford complete conviction that the respondent's qualification is in fraud of the law, and cannot with justice or propriety be sustained.

It is of no consequence for the respondent to say that his estate is not nominal or fictitious, because he has in him every thing which his title-deeds appear to convey. Every qualification must have all the external forms and requisites of a good vote, such as charter, feisin, and a certain extent of valuation; but such a title may nevertheless be entirely nominal, and created on purpose to give indirectly to the person from whom the title flows, a vote which he could not directly enjoy; and it is by this test the appellants wish the present case to be judged.

II. Even supposing the real evidence of the case not to be

be sufficient to prove that the respondent's qualification is in fraud of the law, the Court of Session did wrong in shutting out the light, by finding it incompetent to put to the respondent the questions proposed by the appellants, and above stated. The averments made by the appellants are certainly relevant, and if admitted or proved, must be decisive in their favour; and as in every other case parties are intitled by the law of Scotland and the form of proceeding in the Court of Session, to call upon each other to confess or deny their respective allegations before going into the expence of a proof, the appellants are at a loss to conceive upon what ground the court could find it incompetent in this particular case.

Objection.—It was said for the respondent, That the oath of trust and possession, introduced by the statute of the seventh of George II. is the only criterion by which it is to be determined what votes are to be considered as nominal or fictitious.

Answer.—It is however a mistake to suppose that the oath of trust is the only test for judging whether the estate upon which a vote is claimed is real, or nominal and fictitious. The legislature never could mean to leave it to the claimant to make a bad right a good one, by perjuring himself, or by taking an oath he did not understand: it is one mode of discovery; but it is by no means the only one to be resorted to. Although a person objected to as a mere trustee of the estate should take the oath in the Court of Freeholders, it would still be competent, at least within four months of his enrollment, to a complainer, to demand the usual process of the law for proving that he had granted a back-bond or obligation to denude of his estate, or to reconvey it; and why the same process should not be allowed for the purpose of proving facts and circumstances, which, if admitted or proved, will necessarily infer that the pretended qualification is nominal or fictitious, and in fraud

of the law, the appellants are unable to discover. It might with equal justice be maintained that a person's taking the bribery-oath bars all other investigation of the fact to impeach his vote ; which has never hitherto been understood. Although the Court of Session has no jurisdiction in the first instance, in questions of enrollment, but acts only as a court of review, the common and ordinary modes of discovering facts must be allowed in these questions, as well as in others. They accordingly are in the constant practice of receiving evidence in support of objections to an enrollment, though it was not before the Court of Freeholders, who have no power to compel production of writings, or to examine witnesses ; and it must be equally competent to the appellants to call upon the respondent to admit or deny the allegations made by them, as it would be to call upon him in an action of debt, to say whether or not the instrument produced in evidence of the debt was or was not of his hand-writing.

By the common law of Scotland, when averments in point of fact are made by a party in a suit, it is in general competent to prove them in one of three ways ; either by writing, or by parole evidence, or by the oath of the other party upon a reference. This last is a sort of judicial transaction, which consequently puts an end to the litigation ; and although it is believed that such oath upon reference is not usual in the practice of the common law-courts in England, yet in Scotland the competency of it never was doubted ; and there are very few exceptions to the rule by which a party is obliged to swear to facts upon reference, and not to shelter himself under a general allegation, but to answer special interrogatories when called upon to do so.

T. ERSKINE.

ALEX. WIGHT.

THE

THE RESPONDENT'S CASE.

IN the month of October 1788, the respondent claimed to be enrolled as a freeholder in the county of Aberdeen.

The titles upon which he made this claim were,

1. Charter of resignation in favour of Alexander Duke of Gordon, his heirs and assignees, of the lands, lordships, and others therein mentioned ; comprehending, *inter alia*, the lands and barony of Touch, Cluny, and Midmar, of which the following lands are parts and pertinents, viz. all and whole the lands of Findlettree, with the pertinents therein specified ; as also the town and lands of Tellymair, Tellygownie, and Haybogs, with the mill, mill-lands, and astricted multures of Tellymair, and whole pertinents of said lands, all lying within the parish of Touch, and sheriffdom of Aberdeen, which charter bears date the 7th of August 1786.

2. Disposition by the said Alexander Duke of Gordon of the lands, and others before mentioned, in favour of the respondent in life-rent, containing an assignation to the said charter and precept of feisin therein contained, so far as respects the lands, and others above mentioned ; which disposition is dated the 26th of September 1780.

3. Instrument of feisin following upon the said charter and disposition, dated the 27th, and recorded in the particular register of feisines kept at Aberdeen, upon the 29th of the said month of September 1786.

To this claim the appellant Mr. Skene stated the following objection : “ That the qualification therein described, “ upon which the said Sir John Macpherson claims to be “ enrolled as a freeholder of this county, is nominal and “ fictitious, confidential, and created for the sole purpose
of

“ of enabling him to vote ; and that, in defraud of the statute of the 7th of Geo. 2. and of the other laws respecting the qualifications of freeholders entitled to vote in the election of a member to serve in parliament for this county.”

To this objection the respondent's agent made the following answer : “ That the objection is without foundation, and arises merely from presumption ; that the claimant is a real and true purchaser of the superiority for a price actually paid ; and therefore it would be doing an injustice to deprive him of the benefit of that purchase, as no objection has been, or can be stated to his titles to be enrolled.”

Upon this objection and answer, Mr. Skene and the gentlemen who adhered to him were heard by counsel ; and after a very deliberate consideration of the matter by a respectable meeting of forty freeholders, the objection was repelled by a majority of twenty-eight to eight, four of the members not inclining to vote.

Against this enrolment the appellants complained to the Court of Session ; and stated, *1mo*, That, from various circumstances, it evidently appeared that the qualification upon which the respondent was enrolled was nominal and fictitious ; and, *2do*, They insisted that the respondent should answer certain interrogatories : from his answers to which they contended, that the nominal and fictitious nature of his qualification, if not already sufficiently obvious, would clearly appear.

The respondent, on the other hand, maintained, *1mo*, That he was not bound to answer any questions proposed by the appellants in order to shew that his qualification was nominal and fictitious. *2do*, That there was nothing in the facts which they had specified, even if they were to be admitted by him, which could infer that his qualification was nominal and fictitious. It would therefore be nugatory

tory to answer their questions ; they had nothing to do with the cause ; and it was a matter of no consequence whatever, whether the facts which they meant to establish by that mode of investigation were true or false.

The Court of Session pronounced the following interlocutor : “ The lords having advised this petition and complaint with the answers thereto, replies and duplies, they find it incompetent to put the questions to the respondent proposed by the complainers ; repel also the objection of nominal and fictitious to the respondent’s qualification, and therefore dismiss the complaint ; assilzie the respondent, and decern.”

The appellants have appealed from this interlocutor to your lordships ; but the respondent hopes that it will be affirmed for the following and other REASONS :

I. By the ancient law of Scotland, every vassal of the crown attended in parliament, and it was not till 1587, that the mode of electing representatives came to be introduced.

By the statute 1681, cap. 21. it was enacted, “ That none shall have vote in the election of commissioners for shires or stewartries, which have been in use to be represented in parliament and conventions, but those who at that time shall be publicly infeft in property or superiority, and in possession of a forty shilling land of old extent, holden of the king or prince, distinct from the feu-duties in feu-lands ; or where the said old extent appears not, shall be infeft in lands liable in public burden for his Majesty’s supplies for four hundred pounds of valued rent, whether kirk-lands, now holden of the King, or other lands holding feu, ward, or blench of his Majesty as king or prince of Scotland ; and the apprisers or adjudgers shall have no vote in the said elections during the legal reversion ; and that after the expiring thereof, the appriser or adjudger first infeft shall only have
vote

“ vote, and no other appriser or adjudger coming *in pari*
 “ *passu*, till their shares be divided, that the extent or va-
 “ luation thereof may appear ; and that during the legal,
 “ the heritor having right to the reversion, shall have vote ;
 “ and likewise proper wadsetters, having lands of the hold-
 “ ing, extent, or valuation foresaid ; which right to vote
 “ proceeding upon expired comprising, adjudication, or
 “ proper wadset, shall not be questionable upon pretence
 “ of any order of redemption, payment, and satisfaction,
 “ unless a decret of declarator, or voluntar redemption,
 “ renunciation, or resignation, be produced ; and that ap-
 “ parand heirs being in possession by virtue of their prede-
 “ cessor’s infestments, of the holding, extent, and valua-
 “ tion foresaid, and likewise life-renters and husbands, for
 “ the freeholds of their wives, or having right to a life-rent
 “ by the courtesy, if the said life-renters claim their vote,
 “ otherwise the fiar shall have vote ; but that both fiar and
 “ life-renter shall not have vote, unless they have distinct
 “ lands of the holding, extent, or valuation foresaid ; but
 “ that no person infest for relief or payment of sums, shall
 “ have vote, but the granters of the saids rights, their
 “ heirs or successors.”

No subsequent statute either has taken, or was meant to
 take, the privilege of voting for a member of parliament
 from those wadsetters and life-renters, upon whom that
 right was thus conferred by the act 1681.

Since that time, indeed, two acts of material consequence
 to the present cause have been passed relative to the quali-
 fication of freeholders. These are the acts of the 12th of
 Queen Anne, and the 7th of Geo. 2. The sole object of
 these statutes was to prevent all persons whatever from vot-
 ing, who had not really in them that estate, which from
 their title-deeds they appeared to possess. It was not the
 intention of these statutes to prevent wadsetters and life-
 renters from voting, but to prevent persons who are neither
 the

the one nor the other, and who have no title in any other character to that privilege.

As the whole system of law relative to the election of members of parliament is entirely statutory, and depends principally upon the statutes which have already been mentioned, so it is apprehended that judges, in determining any question arising out of that system, are to be directed solely by the enactments of the statutes; they are merely interpreters of the acts of parliament; and have no right to do more than obey the injunctions, and give effect to the particular regulations contained in those acts, from which alone their power of determining as to the qualification of freeholders is derived.

Now the statutes of Queen Anne and Geo. 2. while they were intended to prevent persons from voting who had not really in them those estates upon which they claimed that right, and to detect latent and implied trusts, of which nothing appeared from the title-deeds; so the statutes pointed out and specified the way and manner in which this investigation was to be made, and ordained every person who claimed the right of voting to take, when required, certain oaths which the legislature introduced as the only means of detecting whether or not a person, who from his title-deeds appeared to be an unexceptionable voter, was truly so; and whether his estate was a true and real estate in him, or only nominal and fictitious.

The oath of the statute of Queen Anne is in these terms: "I *A. B.* do, in the presence of God, declare and
 " swear, That the lands and estate of ———, for
 " which I claim to give my vote in this election, are not
 " conveyed to me in trust, or for the behoof of any other
 " person whatsoever: And I do swear before God, that
 " neither I, nor any person to my knowledge, in my name,
 " or by my allowance, hath given, or intends to give any
 " promise, obligation, bond, back-bond, or security, for
 " re-

“ re-disponing or re-conveying the said lands and estate,
 “ any manner of way whatsoever. And this is the truth
 “ as I shall answer to God.”

This oath not being thought sufficiently comprehensive to guard against the evil the legislature had in view to prevent, the following oath was substituted in its place by the act of the 7th of George II. cap. 16: “ I *A. B.* do, in the
 “ presence of God, declare and swear, That the lands and
 “ estate of ———, for which I claim a right to vote
 “ in the election of a member to serve in parliament for
 “ this county or stewartry, is actually in my possession, and
 “ do really and truly belong to me, and is my own proper
 “ estate, and is not conveyed to me in trust, or for or in
 “ behalf of any other person whatsoever; and that neither
 “ I, nor any person to my knowledge, in my name, or on
 “ my account, or by my knowledge, in my name, or on
 “ my account, or by my allowance, hath given, or intends
 “ to give, any promise, obligation, bond, back-bond, or
 “ other security whatsoever, other than appears from the
 “ tenor and contents of the title upon which I now claim
 “ a right to vote, directly or indirectly, for re-disposing and
 “ re-conveying the said lands and estate, in any manner of
 “ way whatsoever, or for making the rents or profits there-
 “ of forthcoming, to the use or benefit of the person from
 “ whom I have acquired the said estate, or any other per-
 “ son whatsoever; and that my title to the said lands and
 “ estate is not nominal or fictitious, created or reserved in
 “ me, in order to enable me to vote for a member to serve
 “ in parliament, but that the same is a true and real estate
 “ in me, for my own use and benefit, and for the use of no
 “ other person whatsoever: and that is the truth, as I shall
 “ answer to God.”

Though these oaths are expressed in different terms, and though the latter is much more comprehensive than the former, yet nothing farther was intended by either of them than

than to put a check to the practice of giving estates in trust, or redeemable for elusory sums, on purpose to create and multiply votes. The preamble of the act of Queen Anne bears, that the oath introduced by that statute was intended for this purpose; and the oath introduced by the act of George II. though more comprehensive, is the same in substance, and was intended to answer the same end.

The legislature having therefore clearly enacted, That where a freeholder's title-deeds are fair and unexceptionable, and where he takes the oath introduced by the act of George II. well known by the name of the Trust-Oath, he is entitled to vote for a member of parliament; upon what ground can any court of justice pretend to erect themselves into an inquisitorial, a legislative court, and introduce a very different examination and mode of investigation from that introduced by law? The act of parliament has said, that a freeholder taking the oath above-mentioned at the request of any other freeholder, shall be enrolled as absolute proprietor of the estate in right of which he claims to be enrolled: Upon what ground shall any court of justice say that notwithstanding a person's having taken that oath he shall undergo another and a very different examination as to the very matter which it is the object of the trust-oath to clear up and ascertain? The act of parliament says, that where a person is enrolled, and shall refuse to take the trust-oath, his vote shall be held nominal and fictitious, and he shall be erased from the roll; upon what ground then can any freeholder's name be erased from the roll, upon the idea that his vote is nominal and fictitious, without his having refused to take that oath, upon his taking which the legislature has declared that his qualification is no longer subject to the objection of nominal and fictitious?

And this proposition, that the trust-oath is the only criterion to discover what votes are nominal and fictitious, does not rest upon the idea that a person who has once been
examined

examined cannot be examined again. The respondent has no occasion to resort to such a principle. The principle upon which he rests his doctrine is very different, is very simple, and is this : That the legislature requires freeholders to take the trust-oath, in order to shew that their qualifications are not nominal and fictitious ; and it declares that the qualifications of such freeholders as take that oath are no longer liable to that objection.

In short, to comprise the respondent's doctrine in a single sentence, he maintains that, by the act 1681, wadsetters and life-renters have the right of voting, and this right they still enjoy, under this condition only, that, before exercising their right, they shall, if required, take the oath of trust and possession. The objectors admit in their argument, That a proper wadsetter, or a life-renter of superiority, may have a real and good title of voting. The act 1681 renders this admission necessary. But if the act itself draws no line of distinction, how can any court of law make an addition to the act, by drawing such a line, and by restricting the general enactment of the statute ?

And indeed the inconvenience, and really the impracticability of the Court of Session entering into a separate inquiry with regard to every freeholder's right of voting from the one end of Scotland to the other, and examining every freeholder upon special interrogatories, are sufficiently obvious, and would necessarily prevent any general principle being established, upon which the qualification of freeholders could be ascertained. It would be impossible for any court of law to find time to discuss such a mass of litigation as would thus be occasioned ; the expence to the country would become absolutely intolerable ; the specific test introduced by the legislature would be taken away and destroyed ; and judges would be invested with the power of arbitrary decision in political questions, questions of all others in which such a power ought to be withheld from judges of every denomination.

It

It is believed that it was upon these and upon similar principles, that the House of Lords pronounced various judgments after the general election in 1768, all of them proceeding upon the doctrine, that to detect a latent and implied trust, the only mode of investigation which was competent was by putting the trust-oath : more particularly in a petition and complaint against David Wallace, who had been enrolled upon a life-rent disposition from the Earl of Panmure, upon certain lands in the county of Forfar, and had taken the oath of trust and possession, it was argued that his qualification was nominal and fictitious, as, it was said, would appear if he were obliged to make oath to the following particulars : 1st, That it had been agreed between Lord *Panmure* and him, that he should accept of the life-rent for the sole purpose of creating a vote, and supporting Lord Panmure's interest. 2d, That he had granted a back-bond to denude upon demand, but which was retired upon his concurring in a feu-charter of the lands to a trustee. 3d, That though the disposition bears value, none was paid. 4th, That he receives no revenue or profit in consequence of the life-rent. 5th, That the titles were made out at Lord Panmure's expence, whilst the respondent took no concern in the present question, nor ever got the papers delivered to him. 6th, That he still considers himself as under an obligation in conscience, and as an honest man, to denude in favour of Lord Panmure when required.

In the answers to the complaint it was argued, that the mode of trial pointed out by the statute could not be altered by inferior authority, nor the Court listen to the demand, unless they were to assume the powers of the legislature.

Nevertheless, Mr. Wallace was appointed to swear upon the interrogatories, held as confessed for refusing, and ordered to be expunged from the roll ; but upon an appeal to the House of Lords, it was ordered, " That the interlocutors complained of be reversed ; and that the appel-

“ lant be replaced upon the roll of freeholders of the county
“ of Forfar.”

About the same period, John Johnston, Esq. and two other gentlemen who had been expunged from the roll of freeholders in Cromarty, under circumstances every way similar to those of Mr. Wallace, except that they had not taken the oath of trust and possession, also entered appeals, pleading,
“ That the statute of the 7th of George the Second having
“ prescribed an oath to be put to a freeholder respecting
“ the reality of his estate and interest in the freehold, before
“ he could be allowed to vote, the demand made by the
“ respondent of examining him upon oath was incompetent
“ and inadmissible. The statute justly thought it sufficient
“ to give an opportunity to all parties interested, of putting
“ the appellant to this test when he should come to exercise his right of voting, and wisely prescribed a specific
“ test, in order to take away from judges the power of
“ arbitrary decision in cases of election.”

Accordingly, a judgment of reversal was pronounced in similar terms to that in the case of Mr. Wallace, as it also was in an infinity of other cases, from the counties of Forfar and Cromarty.

It is a fact which cannot be denied, that all of these judgments proceeded upon the principle, that the trust-oath was the only test to ascertain whether or not a qualification is nominal and fictitious; and accordingly, both in the argument at the bar in the Court of Session in this case, and what is still stronger, in the opinions of the judges delivered on the bench, it was admitted, that the judgments of the House of Lords, in these cases, proceeded upon that principle.

It deserves farther to be remarked, not only that the fate of several contested elections in *Scotland* in 1768, was decided in consequence of these judgments proceeding upon that principle; but that since that time it has been held in
this

this country, till very lately, as established and indisputable law, that if a freeholder took the oath of trust and possession, his qualification was no longer liable to the objection of nominal and fictitious.

If, therefore, any regard is to be paid to a train of judgments pronounced by the House of Lords in the most solemn manner, and in which many gentlemen have confided so far as to acquire property, upon the faith that uniformity would be preserved in the law of the land with regard to so material a point as the right of voting for members of parliament, no attention can be paid to the doctrine, that besides the test of the trust-oath, freeholders must answer all the interrogatories which the ingenuity, the whim, or the picque of any other freeholder may prompt him to propose.

The application of this doctrine to the present case is sufficiently obvious. The respondent's title-deeds are perfectly unexceptionable; and if the appellants allege that he holds his estate under any latent or implied trust, they will have an opportunity, before he can give his vote for a member of parliament, to call upon him to take the trust-oath; but they are not entitled to put any interrogatories whatever, in order to discover circumstances which they allege will prove the qualification to be nominal and fictitious.

II. Supposing, however, that the respondent were mistaken in point of law, and that he were bound to answer interrogatories put to him, for the purpose of discovering whether or not his qualification is nominal and fictitious, still it is evident, that he could be bound to answer only pertinent questions; his answers to which might lead to some conclusion relative to the objection stated against his qualification. Now, in truth, the facts which are alleged by the appellants, in order to show that the respondent's qualification is nominal and fictitious, are immaterial; nor, were he to answer their interrogatories in the manner most

agreeable to their own inclination, would it follow that he had been improperly enrolled.

They have set forth, that the Duke of Gordon has parcelled out the superiority of lands contained in one charter to twenty-four life-renters of bare superiorities : That the dispositions to these life-renters, and the instruments of feisin, are all of the same date, and registered on the same day ; and the appellants specify, in their proceedings before the Court of Session, various other circumstances of a similar kind, tending, as they allege, to point out the nominal and fictitious nature of the respondent's qualification.

All of these circumstances seem totally immaterial. Whether the lands, of which the noble Duke has parcelled out the superiority, are contained in one charter or in twenty, is a matter of no more consequence than the fact that the dispositions from his Grace to the different voters, and the instruments of feisin, are all of the same date, and registered on the same day. All circumstances of this kind are nugatory, and undeserving of notice.

At the same time, the respondent does not admit the allegations to be true in point of fact ; he has no opportunity of knowledge with regard to some of them ; and with regard to all of them he says, that being of no consequence to the cause, he is not bound either to confess or deny them.

As to the special interrogatories proposed by the appellants, it will be sufficient to shew of what little consequence any answers to these questions can be, to state, that the noble Duke, from whom the respondent acquired the qualification upon which he is enrolled, holds his estate in fee simple, unfettered by an entail ; and the superiority which his Grace conveyed to the respondent, is the superiority of certain lands, the property of which was feued out to the family of Byres above a century ago ; and accordingly the subaltern rights and infeftments granted to these vassals are
expressly

expressly excepted in the warrandice of the conveyance of the superiority of the respondent.

The respondent purchased this superiority at a fair and adequate price; he holds it in life-rent; the valuation is 590l. 14s. Scots; the feu-duty is 10l. Scots; and the titles, by which the conveyance to the respondent was executed, have been already stated.

The respondent has no objection farther to declare, though he is far from thinking that it is incumbent upon him to say any thing upon the subject, that he acquired the life-rent of the superiority in question for the express and special purpose of enabling him to vote for a member of parliament. This was his object in acquiring the qualification; it was his view in making the purchase. Had not the superiority given him this right, he probably never would have acquired it; and were this right now taken away, he would probably care very little what became of the superiority.

In these circumstances it matters not what answer the respondent could make to the interrogatories proposed by the appellants. What does it signify whether he applied to the noble Duke to obtain the qualification, or was asked by his Grace to make the purchase? What does it signify who was at the expence of making out the title-deeds? when these deeds were delivered to the respondent? and who is to pay for his defending his qualification here and in the Court of Session? All these are circumstances of no moment whatever. The true question is, Whether the respondent has really acquired his qualification, and has it now really in him? Upon this question, circumstances such as those here mentioned, can have no effect.

Neither is it of any moment whether the respondent acquired his qualification by purchase, or by gift and donation: it could afford no objection to a qualification that the disposition by which it was conveyed bore to be granted for

love and favour, nay, for the express purpose of enabling the grantee to vote for a member of parliament. There is surely nothing illegal, or even improper, in one person granting, and another acquiring such a right.

Neither does it signify what is the value of the *reddendo* payable out of the lands for which the respondent is enrolled. It is the superiority alone which confers the right of voting, and this right is equally good when the superiority is acknowledged by the payment of a penny Scots, or of an elusory duty, such as a pair of spurs, or a snow-ball, as when it is acknowledged by the payment of a large sum of money, or by valuable prestations.

It is needless to enlarge upon these points; they were held as sufficiently established in the case of Elphinston *versus* Campbell, and others, determined by your Lordships 30th April 1787; and in the case of Drysdale against Lindsay, decided by the Court of Session about a year ago.

It deserves particularly to be observed, that though in this last-mentioned case the Court of Session ordered Mr. Lindsay to answer interrogatories almost precisely the same with those which the appellants wish to put to the respondent, and though Mr. Lindsay answered those questions in the manner most agreeable to his opponent, and admitted the facts which were specified as sufficient to shew that his qualification was nominal and fictitious, yet the Court of Session ordered him to be added to the roll of freeholders in the county of Fife, and thus in effect found that circumstances precisely similar to those specified in the present case could not infer that a qualification was nominal and fictitious.

It seems therefore not only incompetent but nugatory to call upon the respondent to answer the interrogatories proposed by the appellants. They have no right to put any questions at all; and supposing them to have such right,
the

the questions which they have proposed are nugatory, and not pertinent to the cause.

III. The respondent holds it to be improper to say any thing upon the great question of Who ought and who ought not to have the right of voting in Scotland? Your Lordships are to judge who have, not who ought to have that right. If the appellants wish to have any alteration of the law in that respect, they ought to apply, not to the Court of Session or to your Lordships in your judicial capacity, but to the legislature.

J. SCOTT.

19th April 1790.

WILLIAM TAIT.

Ordered and adjudged, That the interlocutors complained of be reversed: And it is further ordered, That the respondent do confess or deny the averments in the appellants pleadings.

* * * The Speech of Lord Chancellor Thurlow on this occasion, is to be found in 3 *Lud.* p. 387.

(No. 2.)

IN THE HOUSE OF LORDS.

William Elliot of Wells, Esq. one of the Freeholders of the County of Roxburgh, *Appellant.*

Lieutenant-Colonel Robert Pringle, of the Corps of Engineers, *Respondent.*

THE APPELLANT'S CASE.

AT Michaelmas 1781, the respondent claimed to be enrolled a freeholder of the county of Roxburgh, as standing infest in the lands of Bankhead, by virtue of a conveyance to him for life, granted by John Pringle of Clifton, Esq. the lands so conveyed being a part of Mr. Pringle's estate, held under a settlement of strict entail.

It was perfectly well known at the time, that this was a qualification merely nominal and confidential, created to increase Mr. John Pringle's influence in the county. Every circumstance attending the transaction showed it; but the consideration of Mr. Pringle's incurring a forfeiture of his whole estate by this alienation, if real, was alone sufficient to carry conviction. Yet no objection was made to the respondent's enrollment, it being then understood to be vain to object to what appeared good upon the face of the title-deeds, and the prevalence of example left as little room to suppose that tendering the oath, introduced by the act of 7th Geo. 2. would mend the matter.

The judgment pronounced by your lordships in the case of the freeholders of Aberdeenshire, and Sir John Macpherson, in April 1790, ascertained the right of the freeholders

holders to investigate the reality of qualification by other means than putting the oath ; and accordingly, at a meeting of the freeholders of the county of Roxburgh, held on the 24th of July 1790, for the purpose of electing a commissioner to serve in parliament, the appellant objected to the respondent's title as nominal and fictitious, and moved that he should take the oath, but previously that he should answer certain interrogatories, the tendency of which was to prove, by the respondent's own confession, that the qualification was given to, and held by him, not for his own use and benefit, but merely to support and increase the interest of Mr. Pringle the grantor.

The respondent, by his answer, professed his willingness to take the oath, but he declined to answer the interrogatories, because he considered that the freeholders had no right to put them. The appellant then moved, That in respect of the respondent's having declined to answer the interrogatories, his name should be erased from the roll ; and by the order of the majority of the freeholders, his name was erased accordingly.

The respondent presented his petition and complaint to the Court of Session against this judgment and act of the freeholders, and thereby maintained, generally, That it was not competent to them to tender interrogatories to a person standing on the roll, or to strike him off for declining to answer ; because the act of the 16th Geo. 2. cap. 11. which permits any freeholder, conceiving a person to have been improperly inrolled, to exhibit his complaint to the Court of Session within four months, adds, “ That if
“ no such complaint shall be exhibited within that time,
“ the freeholder inrolled shall stand and continue upon the
“ roll until an alteration of his circumstances be allowed by
“ the freeholders, at a subsequent meeting, as a sufficient
“ cause for striking or leaving him out of the roll.” And, in the present case, the respondent said, it was not alleged that

that his circumstances had undergone any change or alteration between the time of his inrolment in 1781, and his being struck off the roll in July 1790.

The appellant, by order of court, put in answers to this complaint, maintaining the opposite doctrine; and the court pronounced the following interlocutor: "The lords having advised the foregoing petition and complaint, with the answers thereto, they find, that the freeholders of the county of Roxburgh did wrong in striking the complainer's name out of the roll of electors of a member to serve in parliament for that county, and therefore grant warrant to, and authorize and ordain the Sheriff Clerk of the county to replace the complainer's name on the roll where it would have stood if it had not been so struck out, and decern and declare accordingly, but find no expences due."

The appellant having presented his petition to the Lords of Session, reclaiming against the said interlocutor, they were pleased to refuse the desire thereof.

The appellant conceiving himself and the other freeholders of the county to be greatly aggrieved by the said interlocutors of the Lords of Session of the 8th and 23d of December 1790, and that the same are contrary to law and justice, has appealed to your lordships, and humbly hopes that the said interlocutors will be reversed, for the following amongst other REASONS:

The question in this cause is, Whether the freeholders have a right to object to, and investigate the qualification of a person upon the roll, although no complaint has been lodged against his inrollment within four months; and although the objection is not founded in any change of his situation or circumstances occurring subsequent to the enrollment? That the freeholders have such a right in a case like the present, seems indisputable. The act of Charles II. made in 1681, being the first which directed rolls of the
free-

freeholders to be made up in the different counties, authorizes the freeholders to meet at Michaelmas, yearly, "and
" to revise the roll of election, and make such alterations
" therein as have occurred since the last meeting." Here are two distinct branches of duty, to revise the roll, and to make the alterations occasioned by change of property since the last meeting. Accordingly, it has never been denied, nor does the respondent in this cause pretend to deny, That while the law stood upon the footing of the act of 1681, it was competent, at any Michaelmas meeting, or meeting for election, to bring forward and take the judgment of the freeholders upon any objection whatever to the right or title of a person, however long his name might have stood upon the roll, and although no alteration of his circumstances had taken place.

Objection.—But it is objected, That a restraint or limitation was introduced by the statute of the 16th of Geo. II. which reaches to every case that can be figured; so that however bad the title can be shewn to be, or even if it were broadly admitted to be bad, still the person must continue on the roll, and be allowed to exercise the franchise as if it were unimpeachable, the challenge not having been brought within four months, unless the objection is grounded on something which did not exist, or could not be stated at the time of the enrollment; the words of the act being, " That if no complaint is exhibited to the Court of
" Session within the time aforesaid, the freeholder enrolled
" shall stand and continue upon the roll until an alteration
" of his circumstances be allowed by the freeholders, at
" a subsequent meeting, as a sufficient cause for striking
" or leaving him out of the roll." And by subsequent parts of the same statute, as well as by the former laws, it is strictly enjoined, that the vote of every person whose name stands on the roll, shall be asked and taken in the election.

Answer.

Answer.—If this be the true explanation or meaning of the law, it must be confessed that it is extremely defective, and that it leads to gross absurdity and injustice. Whether a person has in him the feudal title to the estate, may generally be discovered from the deeds he is obliged to produce when he claims to be enrolled; but he may have such title without enjoying the beneficial interest, or that interest may be vested in him only colourably, for the purpose of procuring himself enrolled, that he may exercise the franchise of voting for the purposes of another: and the device may be so well cloked, as necessarily to require time before it can be brought to light. The legislature could not mean, that a person committing a fraud on the law should be secured from detection, if he escaped it for a period of four months; or that, avowing his fraud, he should be allowed to rank with those to whom, as indisputably enjoying a certain qualification, the most sacred of all trusts is committed.

An attentive examination of the statutes will accordingly prove, that the legislature, when requiring that complaints of enrollment should be exhibited in four months, or otherwise the person enrolled should continue till an alteration of his circumstances had merely in view the formal title, of which the evidence lies in the deeds directed to be produced when he claims, to prevent the repeated discussion of nice technical questions, which the freeholders must be very inadequate judges of. The act of the 12th of Queen Anne, c. 6. declares, “That no person shall, upon any
“pretence whatsoever, be enrolled, except he produce a
“sufficient right or title to qualify him.” Here right and title can mean nothing else than written documents, instructing *ex facie* the right to possess the estate, which a person may produce, and his pretended qualification may notwithstanding be one of those created (in the words of the same statute) on purpose to multiply votes in the election of
members

members to serve in parliament, "contrary to the true intent and meaning of the laws in that behalf," which look to something besides the mere face of the title-deeds. In the same sense the act of the 16th of Geo. II. is to be understood, when it says, "If any person shall be enrolled whose title shall be thought liable to objection, it shall and may be lawful for any freeholder, who apprehends that such person had not a right to be enrolled, to apply by complaint to the Court of Session, so as such application be made within four calendar months after such enrollment; and if no such complaint shall be exhibited within the time aforesaid, the freeholder enrolled shall stand and continue upon the roll until an alteration of his circumstances be allowed as a sufficient cause for striking him out of the roll." And the alteration of circumstances here generally mentioned, is defined in another clause of the statute, "An alteration of that right or title in respect of which the person was enrolled;" right or title being, as in the act of Queen Anne, merely descriptive of the formal, feudal, or written title, exhibited to the freeholders.

It is evident, therefore, that the limitation or the declaration in the act of the 16th of Geo. II. has no relation to those vices or defects which may taint a qualification, appearing unexceptionable on the face of the title-deeds, such as nominality, or the estate being only colourable, or its being held in trust for another, or the person enrolled not being possessed of it for his own use and benefit. Objections of that nature may be stated at any time when the objector comes to the knowledge of them, or finds himself in a capacity to prove them; and, as the detection of fraud must ever be favoured by courts of justice, nothing but the clearest words will be held to shut out the inquiry. It were monstrous to maintain, for example, that, if a person is enrolled, and remains undisturbed for four months, because

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it was not suspected that he held the estate merely as a trustee, he shall continue on the roll, and exercise the franchise as an elector, though an express defeasance or back-bond were discovered, and actually produced or admitted. —Yet such is the respondent's argument; and he must, of necessity, go that length.

Nor is it of any consequence to observe, that the acts of the 12th of Queen Anne, and 7th of Geo. II. have afforded the means of detecting latent trusts and nominality, by requiring a freeholder to take an oath, at the desire of any other freeholder, under the pain of being expunged if he refuses; for, though the oath was introduced as one means of discovery, there is no reason to suppose it was intended to preclude others. It is a settled point, that, when one claims to be enrolled, nominality may be objected, and proved by all ways competent—by interrogating the claimant—by a reference to his oath—by circumstances—or by direct evidence. The claimant cannot be heard to say, First enroll me, and then, if you please, tender the oath prescribed by the 7th of Geo. II. And this point being fixed, it will not be easy to shew that the oath is the only test, as against a person actually on the roll, or that other means of detection could be meant to be prohibited by the legislature. The qualification may be so circumstanced, as that the person taking the oath may be convicted of perjury; but, in general, it resolves only into opinion as to nominality; and, though honestly taken, it cannot surely be maintained that the taker ought to retain his situation, though his opinion can be proved to be erroneous, and that his qualification is, in truth, such as the law and the constitution reprobate. The respondent in the present cause, for instance, may say and swear repeatedly, and he may have persuaded himself that his qualification is “not nominal, or fictitious, created in him for
“ the purpose of enabling him to vote for a member of
“ par-

“parliament;” and that he holds his estate of one shilling *per annum* “for his own use and benefit, and “for the use and benefit of no other person whatsoever.” But who will concur with him in thinking so? And, if the law is not a dead letter, must it not be applied, when it is stated and confessed, that this is part of a large estate, every acre of which must be forfeited, if any one of a multitude of persons interested challenges the alienation; and if the respondent nevertheless persists in retaining that same shilling, by virtue of which he calls himself an independent freeholder of the county of Roxburgh?

SYLV. DOUGLAS.

J. ANSTRUTHER.

Note.—An appendix contains the interrogatories which the respondent refused to answer, and which are to be found in the respondent's case.

THE RESPONDENT'S CASE.

BY an act passed in the seventh year of his late Majesty King Geo. 2. cap. 16. it was enacted, “That “every freeholder, who shall claim to vote at any election of a member to serve in parliament for any lands or “estate in any county or stewartry in Scotland, or who “shall have right to vote in adjusting the rolls of freeholders, instead of the oath appointed to be taken by an “act made in the 12th year of her late Majesty Queen “Anne, intituled, “An act for the better regulating “elections of members to serve in parliament for that part “of Great Britain called Scotland,” shall, upon the request
“ of

“ of any freeholder formerly enrolled, before he proceed
“ to vote in the choice of a member, or on adjusting the
“ rolls, take and subscribe, upon a roll of parchment to be
“ provided and kept by the sheriff or steward-clerk for that
“ purpose, the oath following ; which the preses, or clerk
“ to the meeting, either for the enrolment or election, is
“ hereby empowered and required to administer ; that is
“ to say, I, *A. B.* do, in the presence of God, declare and
“ swear, that the lands and estates of
“ for which I claim a right to vote in the election of a
“ member to serve in parliament for this county or stew-
“ artry, is actually in my possession, and do really and
“ truly belong to me, and is my own proper estate, and is
“ not conveyed to me in trust, or for or in behalf of any
“ other person whatsoever : and that neither I, nor any
“ person to my knowledge, in my name, or on my account,
“ or by my allowance, hath given, or intends to give, any
“ promise, obligation, bond, back-bond, or other security
“ whatsoever, other than appears from the tenor and con-
“ tents of the title upon which I now claim a right to vote,
“ directly or indirectly, for redifponing or reconveying the
“ said lands and estate in any manner of way whatsoever,
“ or for making the rents or profits thereof forthcoming to
“ the use or benefit of the person from whom I have ac-
“ quired the said estate, or any other person whatsoever ;
“ and that my title to the said lands and estate is not no-
“ minal or fictitious, created or reserved in me, in order to
“ enable me to vote for a member to serve in parliament ;
“ but that the same is a true and real estate in me, for my
“ own use and benefit, and for the use of no other person
“ whatsoever ; and this is the truth, as I shall answer to
“ God : and that in case he shall refuse, if required, to
“ take and subscribe the oaths aforesaid, his vote shall not
“ be admitted or allowed, and his name shall forthwith be
“ erased out of the roll of freeholders : and in case any
“ person

“ person shall presume wilfully and falsely to swear and
 “ subscribe the said oath, and shall be thereof lawfully con-
 “ victed, he shall incur the pains and punishment of per-
 “ jury, and be prosecuted for the same, according to the
 “ laws and forms in use in Scotland.”

But the statute which relates more immediately to the present question, is that of the 16th of Geo. 2. cap. 11. intituled, “ An act to explain and amend the laws touching
 “ the election of members to serve for the commons in
 “ parliament for that part of Great Britain called Scotland,
 “ and to restrain the partiality, and regulate the conduct of
 “ returning-officers at such elections.” And in the following clauses : “ Whereas the rolls of electors of commissi-
 “ oners to serve in parliament for the several shires and
 “ stewartries within that part of Great Britain called Scot-
 “ land, have not in every one of the said shires and stewar-
 “ tries been made up every year at the Michaelmas head-
 “ courts, pursuant to the directions of an act of parliament
 “ made in that part of Great Britain called Scotland, in the
 “ year 1681, intituled, “ An act concerning the election
 “ of commissioners for shires ;” for remedy thereof, and
 “ the more effectually to carry the good intentions of the
 “ said act into execution, be it enacted and declared by
 “ the authority aforesaid, That such persons as stand
 “ upon the roll last made up by the freeholders, whether
 “ at the Michaelmas meeting, or at the last election of a
 “ member to serve in parliament, shall be the original con-
 “ stituent members at their next Michaelmas meeting, or
 “ meeting for election, to revise the said roll ; provided al-
 “ ways, and be it enacted by the authority aforesaid, That
 “ it shall and may be lawful for any freeholder standing
 “ upon the roll, to object to the title of any person who
 “ stands at present upon the roll last made up, and for that
 “ purpose to apply at any time before the first day of De-
 “ cember, which shall be in the year of our Lord 1743, by
 “ summary complaint to the Court of Session, who shall

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“ grant

“ grant a warrant for summoning such persons, upon
“ thirty days notice, to answer, and shall proceed in a sum-
“ mary way, to hear and determine upon such complaint ;
“ and if no such complaint shall be exhibited within the
“ time aforesaid, then, and in that case, no freeholder who
“ at present stands upon the rolls last made up in the said
“ counties and stewardries respectively shall be struck off or
“ left out of the roll, except upon sufficient objections arising
“ from the alteration of that right or title in respect of
“ which he was enrolled, sustained by the other freehold-
“ ers standing on the said roll. And be it enacted by the
“ authority aforesaid, That if at any Michaelmas meeting,
“ or meeting for election, any person claiming to be en-
“ rolled, shall, by the judgment of the freeholders, be re-
“ fused to be admitted, or if any person who stood upon
“ the roll, shall, by like judgment, be struck off, or left out
“ of the roll, it shall and may be lawful for him or them
“ who is so refused to be admitted, or whose name is so
“ struck off or left out of the roll, to apply (so as such ap-
“ plication be made within four calendar months after
“ their being so refused, struck off, or left out) by summary
“ complaint to the Court of Session, who shall grant a war-
“ rant for summoning the person or persons upon whose
“ objection or objections he was refused to be admitted,
“ or was struck off or left out as aforesaid, upon thirty days
“ notice, to answer, and shall proceed to hear and deter-
“ mine, in a summary way, on such complaint ; and if any
“ person shall be enrolled, whose title shall be thought li-
“ able to objection, it shall and may be lawful for any free-
“ holder standing upon the said roll (whether such free-
“ holder was present at the meeting or not) who appre-
“ hends that such person had not a right to be enrolled,
“ to apply in like manner by complaint to the Court of
“ Session (so as such application be made within four calen-
“ dar months after enrolment) ; and the said court, after
“ service of such complaint, on thirty days notice, upon the
“ person

“ person said to be wrongfully admitted to the roll, shall,
 “ in like manner aforesaid, hear and determine ; and if no
 “ such complaint shall be exhibited within the time afore-
 “ said, the freeholder enrolled shall stand and continue on
 “ the roll until an alteration of his circumstances be allow-
 “ ed by the freeholders at a subsequent Michaelmas meet-
 “ ing, or meeting for election, as a sufficient cause for strik-
 “ ing or leaving him out of the roll.”

“ And be it enacted by the authority aforesaid, That to
 “ prevent all surprise at the Michaelmas meetings, every
 “ freeholder who intends to claim to be enrolled at any
 “ subsequent Michaelmas meeting of the freeholders, shall,
 “ for the space of two calendar months at least before the
 “ said Michaelmas meeting, leave with the sheriff, or stew-
 “ art’s clerk, a copy of his claim, setting forth the names
 “ of his lands, and his titles thereto, and dates thereof,
 “ with the old extent or valuation upon which he desires to
 “ be enrolled ; and in case of his neglect to leave his claim
 “ as aforesaid, he shall not be enrolled at such Michaelmas
 “ meeting : and in like manner, whoever intends to object
 “ to any freeholder who stands upon the roll, on account of
 “ the alteration of his circumstances, shall, at least two
 “ calendar months before the Michaelmas meeting, leave
 “ his objections, in writing, with the sheriff, or steward’s
 “ clerk as aforesaid, who is hereby required, upon receipt
 “ of the aforesaid claim or objections, to indorse on the
 “ back thereof the day he received the same ; and also to
 “ give a copy of the aforesaid claim or objections to any
 “ person who shall demand the same, upon paying the le-
 “ gal fee of an ordinary extract of the same length.”

The respondent was, at Michaelmas 1781, enrolled a
 freeholder of the county of Roxburgh, upon the following
 titles :

1mo, Disposition and conveyance, dated 14th March
 1780, by John Pringle of Clifton, Esq. whereby he con-

veyed to the respondent “ in life-rent, during all the days
 “ of his life, all and whole these parts of the lands of Lin-
 “ toun and Bankhead, called, The Farm of Bankhead,
 “ possessed by Richard Pringle, with the teinds, parsonage,
 “ and vicarage, lying within the parish of Lintoun and
 “ sheriffdom of Roxburgh.”

2do, Instrument of feisin following upon the said dis-
 position, dated the 25th day of March, and registered at
 Kelfo the 3d day of April 1780.

3to, Certificate that the estate in which the respondent
 was infeft, was rated in the land-tax books at upwards of
 400 l. Scots *per annum*.

The respondent continued on the roll of freeholders of
 the county of Roxburgh, and in the uninterrupted exercise
 of every franchise thereto annexed, from the date of his
 enrollment, which was without objection, in 1781, until the
 24th day of July 1790, when a meeting was held to elect a
 representative for the county of Roxburgh, in the present
 parliament.

The minutes of the election state, That the respondent
 was called upon by Mr. Elliot of Wells, to take “ the oath
 “ of trust and possession ; which oath Colonel Pringle de-
 “ clared his willingness to take ; whereupon Mr. Elliot of
 “ Wells required the colonel, before taking the oath, to
 “ answer the following interrogatories :

“ 1st, Did you, previously to the date of the life-rent
 “ disposition in your favour, apply to John Pringle, Esq. of
 “ Clifton, to grant you such life-rent disposition ? or were
 “ you then, or at any after period, and at what particular
 “ time, solicited by the said John Pringle, or any other per-
 “ son, to accept of it as a freehold qualification ?”

“ 2dly, Was the expence of making out your title-deeds,
 “ relative to the said life-rent, paid by you, or ever de-
 “ manded from you ; or was such expence paid by the
 “ said

“ said John Pringle ? And did you then mean, or think
“ yourself called upon, to defray the expences of defending
“ your title in the Court of Session and other courts, in case
“ of its being challenged ?”

“ 3dly, Who lodged your claim of enrollment with the
“ sheriff-clerk, previous to the meeting at which you was
“ enrolled ? And had you before that time, or at any time
“ since, or have you now, your title-deeds in your pos-
“ session ? And where have they been during the whole of
“ that period ? and where are they now ?”

“ 4thly, In so far as your answer to the last interrogatory
“ may proceed not on your own knowledge of the facts at
“ the time, but from information you have since received,
“ you are desired to specify these particulars, and to say
“ from whom, and when you received such information ?”

“ 5thly, When you agreed to accept of the life-rent upon
“ which you was enrolled, did you mean to acquire it with
“ a view to create a political influence in your own person,
“ by an independent qualification distinct from the political
“ views of your author ? Or was it your purpose to enable
“ him to increase his political influence in the county, by
“ creating votes upon his own estate ?”

“ 6thly, Do you understand, or believe, that Mr. Pringle
“ of Clifton would have conveyed to you the said life-rent
“ qualification, if he had not been satisfied or expected that
“ you were to vote according to his direction, request, or
“ inclination, in any election of a member of parliament
“ that might take place in the county ?”

“ 7thly, Did you, when you acquired the said life-rent
“ right, and do you still, consider yourself in honour bound
“ to vote in such election for the candidate who may be
“ patronized by Mr. Pringle of Clifton ?”

“ 8thly, Do you consider yourself as bound in honour
“ to renounce the said life-rent whensoever Mr. Pringle
“ shall desire you so to do ?”

“ 9thly, Do you know that the estate of Clifton, of which
“ the lands conveyed to you are a part, is entailed, or held
“ by Mr. Pringle, under titles which tied him up either
“ from selling or gratuitously disposing either the property
“ or the superiority of the lands, in whole or in part ?”

“ 10thly, Were a process of irritancy to be brought by
“ an heir of entail against your author for having forfeited
“ his right to his estate, in consequence of his having con-
“ veyed to you the lands on which you are enrolled, would
“ you not think yourself bound in honour, in order to pre-
“ vent the forfeiture from being declared, by not being
“ purged before declarator, to renounce your life-rent
“ right ? And would not you stand, in that respect, in a
“ situation very different from that in which you would
“ have been, had you purchased the life-rent from an en-
“ tire stranger, who, by selling to you, had incurred a
“ similar irritancy ?”

“ Lastly, If you are to answer these interrogatories, you
“ are desired to say, whether you make such answers entirely
“ from yourself, or by the advice of any other person ?
“ And if the last, by what person or persons have you been
“ so advised ?”

“ To which it was answered by Colonel Pringle, that he
“ was ready to take the oath tendered to him ; but that he
“ considered that it was incompetent to the freeholders to
“ put the above interrogatories previous to his taking the
“ oath ; and therefore he declined to answer them. Mr.
“ Elliot of Wells moved, That in respect Colonel Pringle
“ has, as above, declined to answer the interrogatories pre-
“ vious to his taking the oath, his name should be erased
“ from the roll. And before proceeding to put this question,
“ Colonel Pringle desired it might be minuted, that he did
“ not decline to answer the said interrogatories from any
“ contumacy, as he was confident he could answer them in
“ a manner satisfactory to the greatest part of this audi-
ence ;

“ence; but from a full conviction that the freeholders
 “had no right to put them. The meeting, by a majority
 “of twenty-nine to twenty-eight, ordain the name of
 “Lieutenant Colonel Pringle to be erased from the roll;
 “which was done accordingly.”

Under the authority of the above-mentioned statute of the 16th of his late majesty, the respondent presented his petition to the Court of Session, complaining of the proceedings of the court of freeholders, and praying that court to declare, “That the Court of freeholders of the county of
 “Roxburgh did wrong in striking the respondent off the
 “roll; and to order his name to be replaced upon the
 “roll.”

The respondent, by his said petition, insisted,

1mo, That as he had stood upon the roll of freeholders for more than four months unchallenged, and no alteration in his circumstances with regard to his said freehold estate, from the date of his enrollment till that time, being alleged or proved, the freeholders acted contrary to law in striking him off the roll.

2do, The freeholders had no right, or legal authority, to put the interrogatories above stated to the respondent, or to insist upon his answering the same; for as he had stood more than four months on the roll without challenge, until an alteration of his circumstances with respect to his freehold estate should take place, they could not turn him out of the roll, in whatever manner he should answer these interrogatories.

3tio, That the respondent's qualification was not (what it was the object of the interrogatories to make out) a nominal, fictitious, and confidential qualification, but a *bona fide* independent estate, without any trust or condition whatever.

The appellant, in his answers to the aforesaid petition, insisted, That the limitation of four months, in the act

above-mentioned, is confined solely to objections against a claimant's titles, and does not apply to the question, Whether he is truly in possession of the estate contained in his title-deeds, and whether his title thereto is real, or nominal and fictitious: That objections on these two last grounds are competent at any time, however long after the party is enrolled; and that although once or oftener over-ruled, they may be brought on and investigated as often as any freeholder shall chuse to repeat the objection.

The Court pronounced the following interlocutor: "The lords having advised the foregoing petition and complaint, with the answers thereto, they find, That the freeholders of the county of Roxburgh did wrong in striking the complainer's name out of the roll of electors of a member to serve in parliament for that county, and therefore grant warrant to, and ordain the sheriff-clerk of the county to replace the complainer's name in the roll, where it would have stood if it had not been so struck out, and decern and declare accordingly; but find no expences due."

The appellant presented a petition to the Court, complaining of this judgment, and praying an alteration thereof, which was refused on this date, without answers; and he has now brought his appeal to your lordships; but the respondent humbly hopes that your lordships will affirm the judgments complained of, with costs, for the following, among other REASONS:

I. By the 16th Geo. II. c. 11. every decision of the court of freeholders relative to questions of enrolment is made subject to the review of the Court of Session, provided that the application and complaint be made within four months after such decision. The act does not, either in giving the jurisdiction, or in prescribing the limitation, make any distinction between the different sorts of points on which questions of enrolment may depend. The limitation

tation operates upon every case to which the jurisdiction extends; for the right of applying to the Court of Session is everywhere accompanied with a proviso, "that the application be made within four months." When, therefore, any person has been admitted on the roll, and has remained on it four months without challenge, his original right or title can never be brought into controversy. His right to continue on the roll can only be affected by some subsequent event, such as an alteration in his circumstances, or a refusal to take the oath of trust and possession. This consequence would necessarily follow from the incompetency of any court to examine the merits of the order of enrolment, even although it had not been declared (as it is) by the express enactment of the statute. Nothing is, in this case, alleged to have happened that could affect or vary the right which the respondent originally had. The refusal to answer the interrogatories proposed to him could afford no reason for expunging him from the roll, because if the merits of his enrolment were not open to investigation, the freeholders had no authority to propose any questions to him on the subject. It has been found, that the freeholders have no power to alter at a subsequent meeting, the order of the roll made up at a former meeting. *Fac. Coll.* January 23d, 1767. *Rankin of Colden against Ramsay of Kinkell. Wight on Election*, p. 155. It was also found, that the freeholders could not, at a subsequent meeting, restrict an enrolment to a part of the lands on which a freeholder was enrolled at a former meeting. August 9th, 1774. *Stewart against Campbell of Shawbeld. Fac. Coll.* No. 134.

II. It is without any authority from the statute, that the appellant distinguishes between the title and the right of a freeholder, and asserts that the limitation extends only to cases that concern the former, but does not affect those that relate to the latter. The act uses both words indiscriminately to signify the same thing. No man can have a
title

title to be admitted on the roll who has not a complete right of that description which the law requires. It is not enough that his deeds of conveyance appear to be regular on the face of them; he must have a real, substantial, independent interest in the estate on which he claims, otherwise he has no right or title to be enrolled. The freeholders, in the first instance, and the Court of Session in the second, are authorised to exercise their judgment on the whole of the subject, and to examine, by every legal mode of proof, whether the claimant be deficient in any of the requisites that enter into the constitution of a complete and valid title. But when the freeholders have once decided on the right to be enrolled, it is not competent for them, on any ground, or in any way, to review or alter their decision. After the lapse of four months without complaint, it cannot be altered or reviewed by the Court of Session; that is, it cannot be reviewed or altered at all.

This was the opinion of Lord Bankton, who lived at the time the statute was passed. His words are, "But I must premise, that, from the foresaid liberty to challenge those standing on the roll as the same is qualified, *viz.* that if no complaint shall be exhibited within the time limited (*i. e.* before the first December 1743) then no freeholder who stood on the roll last made up shall be struck off, except on sufficient objections arising from the alteration of that right or title in respect of which he was inrolled; it plainly follows, that all persons against whom no complaint was made or exhibited, must continue for life, though their title be ever so defective, unless an alteration in their circumstances happen." *Inst.* vol. 2. p. 459.

III. The power of expunging from the roll a person who refuses to take what is called the trust-oath, does not infer a right to re-examine the merits of the original enrollment. The law expressly authorises the one, and, as the respondent submits, expressly prohibits the other. The dis-

disability to continue on the roll, arising from the refusal to take the trust-oath, commences only at the moment of that refusal. The original right to be enrolled is not brought into question, for the oath relates to the time at which it is tendered : whereas the attempt, in this case, is to impeach the original enrollment, the tendency of the interrogatories being to insinuate that the respondent never had a good title, and never ought to have been put upon the roll. Before the enrollment, and within four months after it, such interrogatories might have been competent. But as the statute, after that period, precludes all complaints against the enrollment, no evidence on the subject can be required or received.

W. GRANT.

5th March 1792.

WM. DUNDAS.

Ordered and adjudged, That the appeal be dismissed, and the interlocutors complained of, affirmed.

* * * The Lord Chancellor being informed in the course of the argument at the bar, that the Court of Session in other cases gave different decisions from the present one, expressed his surprize that the constructions urged by the appellants should have been listened to. His lordship proposed the judgment of affirmance, without entering into the subject ; and Lord Loughborough was not in the house.

(No. 3.)

This Case which the candour of the Counsel induced him to quote, was as follows :

C A S E

Of the Borough of

B O D M I N,

In the County of CORNWALL.

The Committee was appointed on the 17th February 1792, and was composed of the following members :

Daniel Parker Coke, Esq. CHAIRMAN.

W. A. S. Boscawen, Esq.	William Weddell, Esq.
John Campbell, Esq.	Sir John Rous, Bart.
John Dent, Esq.	James Walwyn, Esq.
Morris Robinson, Esq.	Hon. John Somers Cocks,
William Nesbit, Esq.	James Buller, Esq.
Henry Strachey, Esq.	John Trevannion, Esq.

Nominee of the Petitioners,

John Call, Esq.

Nominee of the Sitting Members,

Right Hon. Charles James Fox.

Petitioners,

1. Sir James Laroche and John Sullivan, Esqrs.
2. Certain Electors in their Interest.

Sitting Members,

Sir John Morshead and Roger Wilbraham, Esq.

THE

THE Petitions set forth, That previous to and at the last general election of members to serve in parliament for the borough, there was no lawful mayor of the said borough, and that therefore the senior alderman was the legal and proper returning officer of the same: That before and at the said election, Robert Edyvean was the senior alderman of the borough, and resident therein; but that notwithstanding the premises, Richard Hichens, Esq. sheriff of the said county, caused the precept for the said election to be delivered to Francis John Hext, who then pretended to be the lawful mayor; and under that pretence claimed to be the legal and proper returning officer: That at the said election Sir John Morthead, Bart. and Roger Wilbraham, Esqrs. and the petitioners Sir James Laroche and Mr. Sullivan were candidates: That the said Francis John Hext, under the pretence aforesaid, presumed to act as returning officer at the said election, and took a poll at the same, and made a return to the sheriff of the county, in his own name and the names of certain other persons who countenanced his claim: That the petitioners insist that the said Hext was not, at the time of the said election, the lawful mayor, nor the legal and proper returning officer for the borough; but that he usurped the said office; and that therefore the election could not be lawfully had before him, but was wholly void.

The petitions being read,

Mr. PARTRIDGE stated,

That by the charters which regulate the corporation of the borough, the presence of the mayor was necessary in the election of a successor to his office. But a person of the name of Pennington, who was chosen mayor in 1787 not attending at the day of election in 1788, the corporation was unable to proceed, and was destitute of that officer at the close of the year. An application was on that account

account made to the court of King's Bench, and a *mandamus* was obtained for the election of a mayor. But as all the persons required by law did not even then assemble, the office remained vacant till the 3d of June 1790, on which day only seventeen persons, out of thirty-seven, assembled. Several of these protested against the proceedings of the meeting; but the rest elected Mr. Hext mayor, under a radical defect. A process of *quo warranto* was instituted with all possible speed against him, and is now at issue. But as he filled the office of mayor *de facto*, though not *de jure*, he now understood it to be the law of parliament, though he had formerly given an opinion the other way, that Hext might act as returning officer, and should therefore declare on the part of his clients, that although they possibly might litigate the point with some chance of success, they did not intend to bring forward evidence to substantiate the allegations of their petition, finding that they were mistaken in point of law.

Mr. Partridge having finished,

Mr. PLUMER and Mr. DOUGLAS,

Counsel for the sitting members, said, That they felt it their duty to move the committee, that the petitions be reported frivolous and vexatious. In supporting this motion they observed, that there was no better test of the frivolity of a complaint than this, that if all the facts stated were admitted to be true, they would not warrant the conclusion drawn from them. But allowing that the mayor was not duly elected, and that Edyvean was senior alderman, and should have executed the return, if they should make it appear to the committee, which they could do, that a majority of electors tendered their votes to Edyvean for the sitting members, the return could have been only wrong in form, and the House would have ordered the proper returning officer to amend it. Messrs. Laroche and Sullivan had there-

therefore petitioned the House on a subject which to them was perfectly immaterial, and were obliged at the outset of the trial to acknowledge that they could not support their claim. As the committee were required by the act of parliament to report, whether the petitions did or did not appear to them to be frivolous or vexatious, they would be inclined to follow the rule adopted by the courts of law, which throws the burthen of proving a probable cause of litigation on the party suing. It is a general maxim, that every man is obliged to understand the law. If he is diffident on a particular subject, he may take the advice of those more learned; but when he acts on that advice, he does so at his own peril. It is indeed true, that in an action on the case for a malicious prosecution, the defendant may give in evidence, that he proceeded on the advice of counsel, because such proof removes all idea of malice in himself; but in civil cases, if a man on demurrer is found to have mistaken the law, or at trial is non-suited for want of evidence, he always pays the costs of his adversary.

On the other hand,

Mr. PIGGOT and Mr. PARTRIDGE

allowed, That the sheriff was not obliged to examine the title of the mayor with all the accuracy observed in a process of *quo warranto*, but that he had discharged his duty when he delivered the precept to the person who ostensibly filled the office; yet they thought it hard that petitioners should be punished for mistaking the law, if they acted upon the previous advice of counsel, and desisted the moment they were convinced of their error. That advice in the present instance had been called for in the country, when the person giving it had not an opportunity of consulting his books, or fully considering the case; and it was not till a very late consultation that the petitioners were informed of the real state of the case. But committees ought

ought not to discountenance the candour of professional gentlemen, when it leads them to give up a cause which they are convinced cannot be supported on solid grounds; because in that case they will be compelled to defend every question, whether right or wrong, and to take the chance of procuring a more favourable report by the ingenuity of their arguments. They trusted that the sitting members would rest satisfied with having obtained the victory, and secured their seats, and that they would not insist, as they seemed to do, that to discontinue a suit in an early stage of it, was more vexatious than to prosecute it to a final determination.

Two opinions of counsel having been sent for by the committee and read,

Mr. PLUMER, in reply,

said, That undoubtedly great respect was due to them; but he trusted that the committee would only feel a temporary sorrow at the mistake, which would not influence the justice of their decision. After urging again the analogy which holds between the case of petitioners who fail in substantiating the allegations of their petitions, and those who fail in the litigation of a civil right, and who, excepting trustees and executors, generally pay the costs of an unsuccessful trial; he observed, that the parties here had not used due diligence in taking the advice they sought; for if the consultation had taken place before presenting the petition instead of after, the error might have been avoided. At any rate, it was incumbent on the petitioners to have given notice to the sitting members of their intentions to desist, long before the meeting of the committee; which would have saved the expence that always attends the preparation for a trial. The intention of the 28th of Geo. II. ch. 52. was to make petitioners consider well the grounds of their petitions before they presented them; but especially to be assured of their validity before they entered into a recognizance. He
there-

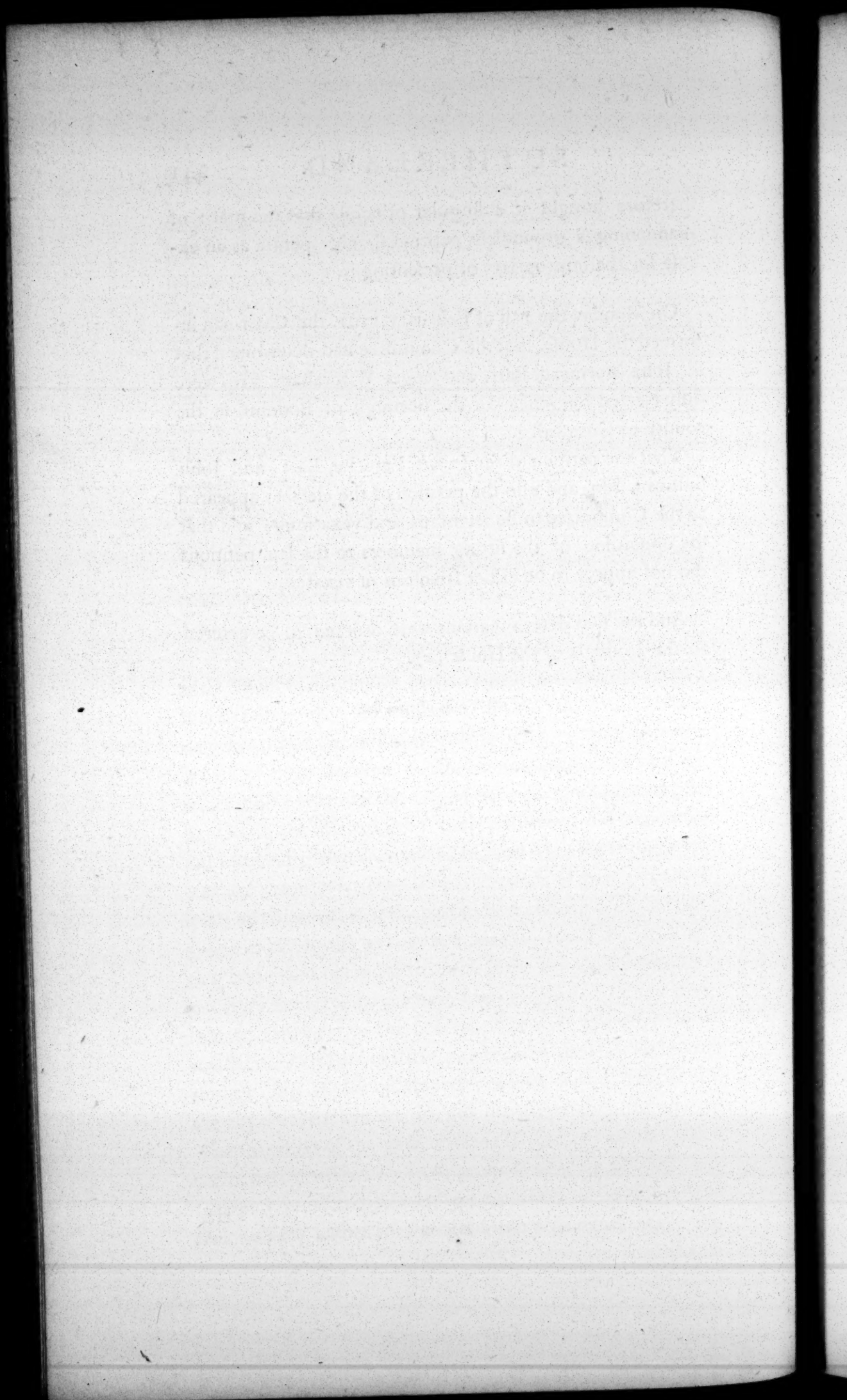
therefore thought it a singular principle that the merit of abandoning a groundless petition should operate as an excuse for the impropriety of presenting it.

On Monday the 21st of February 1791, the Chairman informed the House, that the Committee had determined that Sir John Morshead, Bart. and Roger Wilbraham, Esq. were duly elected burgesses for the borough of Bodmin, in the county of Cornwall :

That the petition of Sir James Laroche, Bart. and John Sullivan, Esq. and also the petition of the electors appeared to the Committee to be frivolous and vexatious ; and that the opposition of the fitting members to the said petitions did not appear to be either frivolous or vexatious.

And the said determinations were ordered to be entered on the Journals of the House (a).

(a) See the Votes of this date.



III.

THE
C A S E

of the Borough of

H O N I T O N,

In the County of DEVON.

The Committee was appointed on Wednesday the
21st of March 1792, and consisted of the following
Members :

Hon. Edward James Elliot, *Chairman*,
Sir William Lemon, Bart.

J. T. Luttrell, Esq.

R. M. T. Chiswell, Esq.

Robert Mackreth, Esq.

N. B. Halhed, Esq.

Charles Long, Esq.

Charles Small Pybus, Esq.

Sir John Honywood, Bart.

Sir John St. Clair, Bart.

Richard Johnson, Esq.

John Harcourt, Esq.

Hon. Henry Hobart.

George Graham, Esq. *Nominee of the Petitioner,*

Sir John Trevelyan, Bart. *Nominee of the
Sitting Member.*

Petitioner,

James Frazer, Esq.

COUNSEL,

Mr. Douglas.

Sitting Member,

George Templar, Esq.

COUNSEL,

Mr. Franklin.

THE
C A S E

Of the Borough of

H O N I T O N.

THE petition of Mr. Frazer set forth, That at the last election for the borough of Honiton, on the 18th of June 1790, the Right Hon. Sir George Young, Bart. Geo. Templar, Esq. and the petitioner, were candidates : That at the said election a poll was demanded, and taken before Robert Gidley, portreeve of the said borough : That many unwarrantable practices were made use of by the said George Templar, and other persons in his interest, to procure a colourable majority for him ; and that the said George Templar was, by his friends and agents, before and at the said election, guilty of gross bribery and corruption, as well by giving as by promising to give money and other rewards to the said voters to vote for him : That the returning officer, during the poll, conducted himself with manifest partiality towards the sitting

R 3 member,

member, and under the undue influence and unconstitutional interference of the said George Templar; and his friends and agents did illegally admit to vote for the said George Templar, a great number of persons who had no right to vote at such election, and reject a great many legal votes which were tendered for the petitioner; and by other undue and corrupt means did procure a colourable majority for the said George Templar, whom he returned as one of the representatives for the said borough, whereas a majority of legal votes was given for the petitioner, who ought to have been returned as duly elected.

The petition being read,

Mr. DOUGLAS

said, That he was about to make, he believed, the most acceptable speech he ever had made to a Committee; namely, to tell them that very little indeed of their valuable time would be required in the discussion of the present case. The evidence which Mr. Fraser had to produce, was laid before him after the accurate investigation of his friend Mr. Estcourt. He thought the case at that time a very proper one to be brought before a committee, as there was only a majority of four; but an act of God, which could neither be foreseen or prevented, had since deprived his client of
five

five of his most material witnesses, and had thus, without his fault, taken from him the means of substantiating his claim. The names of these persons he mentioned; and added, that as the fact would not be controverted, and timely notice had been given to the sitting member, in order to prevent the expence of preparing his defence, he trusted the committee would be of opinion, that his client had not acted in a manner either frivolous or vexatious. Upon this,

Mr. FRANKLIN

said, That after what the committee had heard, he apprehended it was unnecessary for him to add any thing, except to acknowledge the death of the five witnesses whose testimony he believed to have been material to the case of the petitioner. His client, Mr. Templar, was confident of success, had the case been discussed at length; but as at the same time he reflected on the smallness of the majority, the difficult points which might arise in discussing the right of voting (*a*), and the propriety of Mr. Frazer's conduct towards him; these considerations induced him not to press the committee to report the petition in such a way as to entitle him to costs.

(*a*) In the inhabitants, housekeepers, within the borough, commonly called Potwallers.

The counsel having finished, the committee ordered the court to be cleared, and having deliberated and determined that the counsel be called in; Mr. Estcourt, the petitioner's solicitor, being sworn, was asked by the members, whether to his knowledge Mr. Frazer knew that these persons were dead before the renewing of the petition this year? He answered, that he believed he did not. He himself did not know of their deaths till after the renewal of the petition; for Mr. Frazer having left the kingdom before the meeting of parliament, and not returning till lately, it was only upon his arrival that a full investigation of the case took place; when upon discovering the death of five material witnesses, and perceiving that other circumstances of the case were untoward, he advised his client not to prosecute the petition, but to give Mr. Templar immediate notice of his intentions. He mentioned the names of the witnesses, and the persons whose votes they were to impeach. Being asked whether he thought that the death of those five persons would, in itself, have been sufficient ground for advising Mr. Frazer to abandon his petition? He said he thought it would, but that the other circumstances, which arose out of the case, also operated on his mind to give him that advice.

On

On Thursday the 22d of March, the Chairman reported to the House that the committee had determined,

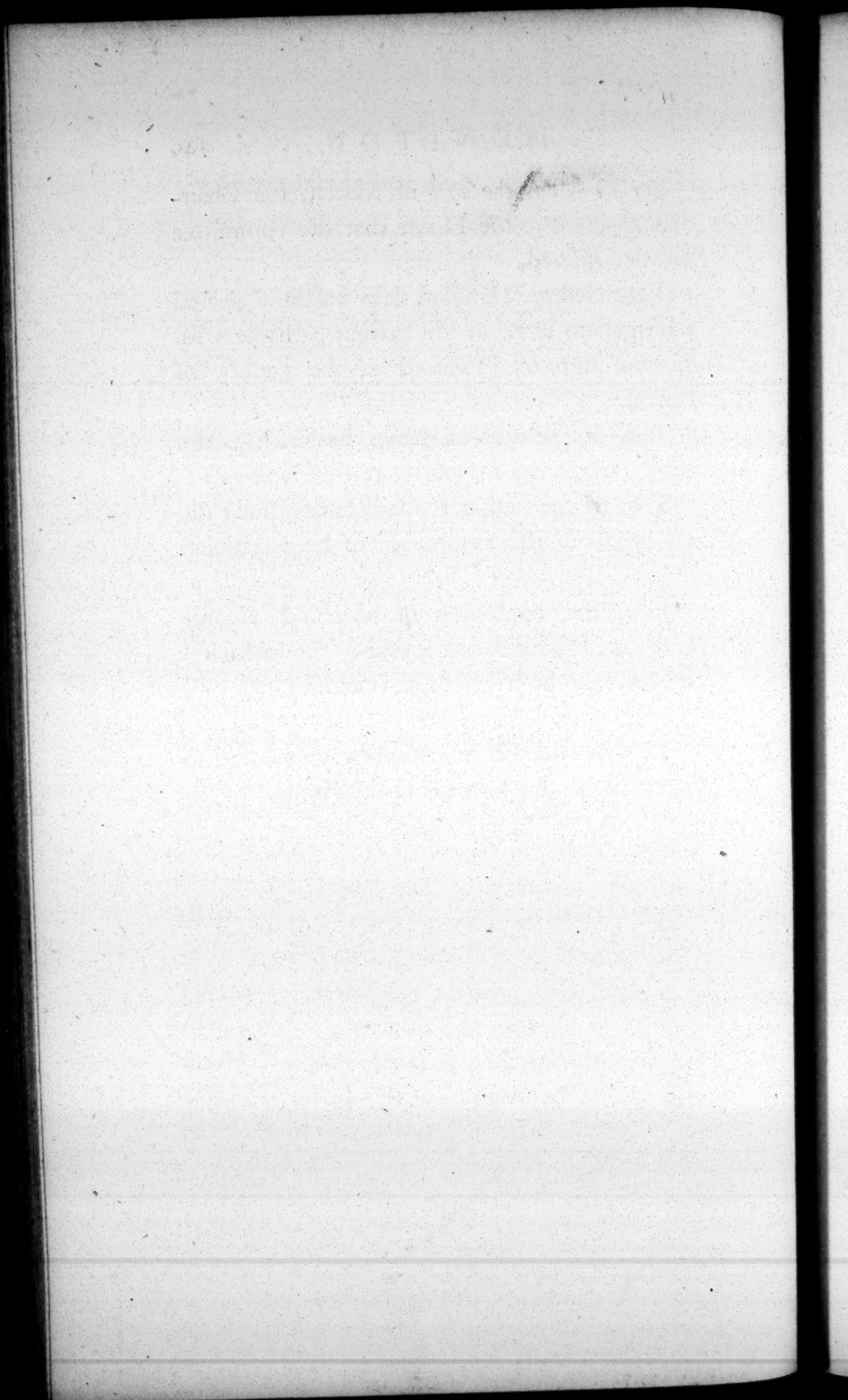
That George Templar, Esq. was duly elected a burghers to serve in this present parliament for the borough of Honiton, in the county of Devon :

That the petition of James Frazer, Esq. did not appear to the committee to be frivolous :

That the petition of the said James Frazer did not appear to the committee to be vexatious : and,

That the opposition of the said George Templar, Esq. did not appear to the said select committee to be frivolous or vexatious.

And the said determinations were ordered to be entered in the Journals of the House.



IV.

THE

C A S E

Of the Borough of

S T E Y N I N G,

In the County of SUSSEX,

On the Petitions opposing and defending

The RIGHT of ELECTION,

Which was reported to the House by a Select Committee,

on the 7th Day of March 1791.

The Committee met on Wednesday the 14th day of March, 1792, and was composed of the following Members :

Sir John Call, Bart. *Chairman*,
Ralph Milbanke, Esq.
Sir George Cornwall, Bart.
Alan Gardner, Esq.
Hon. Wm. Grimestone,
Sir John Woodhouse, Bart.
Lord Advocate of Scotland,
Isaac Hawkins Browne, Esq.
Mark Pringle, Esq.
John Bond, Esq.
Earl Ludlow,
Philip Ragleigh, Esq.
George White Thomas, Esq.
Right Hon. C. J. Fox, *Nominee of the Appellants.*
Hon. Lieut. Col. H. Phipps, *Nominee of the Defendants.*

Petitioners,

1. James Martin Lloyd, Esq. and others, to oppose the Right of Election, reported to the House on the 7th of March, 1791.

COUNSEL,

Mr. Graham, Mr. Douglas, Mr. Milles.

2. Several Persons Electors of the Borough of Steyning, to defend the said Right so reported,

COUNSEL,

Mr. Partridge, Mr. Nath. Bond,

THE

THE
C A S E
Of the Borough of
S T E Y N I N G.

ON Wednesday the 1st of February 1792, petitions were presented from James Whitbread, Esq. and from certain electors in his behalf, complaining that James Martin Lloyd, Esq. had been returned as duly elected for the borough of Steyning, on the 24th day of March, 1791, whereas the petitioner, Mr. Whitbread, was duly elected, and ought to have been returned; Which being read, it was ordered, That the said petitions should be taken into consideration upon Tuesday the 13th day of March, at three of the clock in the afternoon (a).

On the same day, a petition of James Martin Lloyd, Esq. and others, was read, setting forth, That by a late resolution of a Select Committee of the House, appointed to try the me-

(a) See the 2d Steyn. Case.

rits of the petition of Sir John Honynood, Bart. and John Curtis, Esq. complaining of an undue election for the borough of Steyning, in the county of Suffex, and which on the 7th day of March last was by them reported to the House, the right of election of members to serve in parliament for the said borough, is declared to be in the "inhabitants of ancient houses, and houses built on the sites of ancient houses within the borough of Steyning, being householders paying scot and lot, and not receiving alms." But that the petitioners were not satisfied with the said resolution, and were desirous of being admitted parties to oppose the said right of election, and to have the benefit of the statute in that case made and provided; upon which it was ordered, That the said petition should be taken into consideration upon Monday the 12th day of March next, at the usual hour.

On Wednesday the 8th day of February, a petition of several persons whose names were thereunto subscribed, electors of the borough of Steyning, in the county of Suffex, was delivered in at the table and read, setting forth, as in the last, the decision and report of the Select Committee in 1791: And also, that James Martin Lloyd, Esq. and certain other persons, on the
first

first day of the instant February, presented their petition to the House, stating, That the petitioners were not satisfied with the said resolution, but were desirous to be admitted to oppose the said right of election so reported, and to have the benefit of the statute in that behalf made and provided: That the petitioners humbly insist, That the right of election declared by the said Select Committee, is the ancient and true right of election for the said borough of Steyning, and therefore pray that they may be admitted as parties to defend such right of election so reported to the House as aforesaid, and that they may have such further and other relief as to the House shall seem meet. It was thereupon ordered, That the said petition be taken into consideration upon Monday the 12th day of March next, at the same time that the petition of James Martin Lloyd, Esq. and others, is ordered to be taken into consideration.

On Wednesday the 7th of March, the orders of the 1st and 8th of February, relative to the petitions respecting the right of election, were discharged; and the said petitions were ordered to be taken into consideration on the Tuesday following.

At the same time the order of the 1st of February, for taking into consideration on Tuesday

day the 13th of March, the petition of James Whitbread, Esq. and that of the electors, complaining of an undue election and return, was also discharged, and it was ordered that the said petitions be taken into consideration upon Tuesday the 27th day of March.

On the 26th of March, the day was altered to the 3d of April, and on the 2d of April the Committee on the question of right being still fitting, and the Easter-holidays about to commence, it was ordered, That the last-mentioned petitions be taken into consideration on the 17th of April, which day was on the 4th of April changed to the 19th; on which day an adjournment of the House took place, and the Committee was appointed on the following day (a).

The Committee appointed to try the question of the right of election having met, and the petitions relative to it being read, and also the 28 Geo. III. ch. 52. § 25—32: The Chairman informed the Counsel, "That the Committee required the Counsel for the several parties to deliver in statements of the right of election for which they respectively contend;" whereupon Mr. Graham, on the part of the petitioners appellants, delivered in the following statement;

(a) See the Votes of this year.

" That

“ That the right of Election of members to serve
“ in parliament for the borough of ‘Steypning,
“ in the county of Suffex, is in the constable
“ and householders inhabitants within the said
“ borough, paying scot and lot, and not receiv-
“ ing alms ;” and Mr. Partridge, on the part of
the petitioners defendants, stated the right to be
“ in the inhabitants of ancient houses, and of
“ houses built on the scites of ancient houses,
“ within the borough of Steypning, being house-
“ holders paying scot and lot, and not receiving
“ alms.”

These statements having been read,

Mr. GRAHAM

Said, That the petition he had the honour to support was of the nature of an application for a new trial, which the legislature by a late act of parliament had authorized, wisely foreseeing that this tribunal, with the best intentions might err, both as to the admissibility of evidence, and the application of the law to particular facts. In the courts at Westminster such applications are very frequently made ; and it often happens that Judges of the greatest experience and talents, have their decisions set aside upon a more accurate investigation of the case. The ground

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upon

upon which he had to impeach the decision of the former Committee, was, that their verdict, if he might so call it, was against evidence; and as the cause therefore would take the same turn now which it did before, except that some farther traditional evidence would be given, all he had to do was to insist on the same points which had been formerly urged. He then stated, That Steyning was a borough by prescription, without any determination of the House of Commons on the right of election, which was therefore to be collected from immemorial usage: That usage he should be able to ascertain, both by written and traditionary evidence. Of the first kind were the Journals of the House of Commons, containing the history of controverted elections, where the right must have been described and ascertained, in order to decide the title to the seats. The language of the returns, and the polls taken at the different elections, would also throw light upon the subject: And though the latter lose their force of testimony when the identity of the voters, or the capacity in which they voted, cannot be ascertained, it happened luckily for his friends that they were in possession of a most authentic poll, of sufficient antiquity to fix the true constitution of the borough; yet not so ancient as to labour under the disadvantage he had mentioned. This poll would demonstrate

to the Committee, that the right was not then confined to 101 houses, as the defendants contend. The records of the borough will also prove, that from time to time new houses have been erected within the borough, the inhabitants of which will be proved to have voted and executed various returns. On the other head of evidence, he should bring forward the declarations of old people concerning the right, handed down from father to son. But this species of evidence he thought was of a less satisfactory nature, because it was difficult to say what motives persons might have had many years ago to represent the right of election in this or that particular manner; and a still greater degree of uncertainty attached on modern declarations of the right, which generally take their origin from the interested views of some party by whom they are industriously propagated. He therefore thought the Journals, the polls, the returns, and records of the borough, would furnish the most conclusive evidence. They establish the claim of the inhabitants at large, more clearly the farther back they are examined; and the Committee having once ascertained the right in a remote period, will not listen to evidence, the tendency of which shall be to modify or change it. Mr. Graham then detailed the evidence he had to adduce in favour of the extended right.

of representation, accompanying his statement with observations on the tendency and effect of the particular parts of it ; but as he afterwards, in the absence of Mr. Douglas, summed up the whole, and repeated and enforced his observations, I have deferred giving them till the summing up.

EVIDENCE.

The counsel for the petitioners appellants, produced in the course of the case, several office-copies of ancient writs and returns from the Tower; the earliest of which (26 Edw. I.) was a return to the parliament thenholden at York, of two members for Steyning-Bramber. From the 2d of Edw. III. to the 10 Edw III. the returns were for Bramber and Steyning, excepting the 6 Edw. III. when there was a writ and return for Bramber separate: 14 Edw. III. for Steyning separate: 15 Edw. III. to 42 Edw. III. for Bramber and Steyning: 6 and 7 Rich. II. for Steyning separate: 38 Hen. VI. and 12 Edw. IV. for Bramber separate.

Forty returns were also brought from the petty Bag-Office in the Court of Chancery. In the 12th and 13th of Char. II. (the earliest produced from that quarter) the indentures were between the sheriff, of the one part, and the constable and many others, burgeses and commons, of

of the other part, witnessing that the said constable, burgesſes, and commons, had elected, &c. In the 31ſt and 32d of Char. II. the burgesſes, inhabitants, and commonalty elect; alſo in the 1 Jac. II. In 1688, the certificate of the conſtable, in conſequence of the letter of the Prince of Orange, ſtated generally, That the borough had elected Sir John Fagg, Bart. and Sir James Merton, Knight; but in the 10 Will. III. the indenture of return was between the ſheriff and the conſtable, and many others, inhabitants and burghers. The others ſtated the electors to be either inhabitants or burgesſes, or burgesſes and inhabitants.

Theſe having been inſpected, the Journals were next referred to.

In 1701, Sir Rowland Gwynne reported from the Committee of Privileges and Elections,
 “ That the right of election was agreed to be
 “ in the inhabitants paying ſcot and lot, and
 “ not receiving alms; and, that upon the whole
 “ there was

“ For Sir Robert Fagg — 33

“ For the petitioner (Charles Gore-

“ ing, Eſq.) — 30.”

There were mutual charges of bribery; and the election was declared void (a).

(a) Journ. vol. xiii. p. 481.

In 1710, Mr. Freeman reported, " That the
 " right of election was agreed to be in the con-
 " stables and householders, inhabitants within
 " the borough paying scot and lot, and not re-
 " ceiving alms."

That the poll was thus :

51 for the sitting member (Wm. Wallis,
 Esq.)

20 for the petitioner (James St. Amand,
 Esq.)

Bribery was proved on both sides, and the
 election was declared void ; and that no new writ
 should issue that session (a).

In 1712, Mr. Freeman reported, " Upon the
 " petition of Wm. Wallis, Esq. complaining
 " of an undue election and return of Rich.
 " Lord Bellew, of the kingdom of Ireland, to
 " serve for the borough of Steyning, in the
 " county of Suffex."

" That the right of election was not con-
 " troverted."

The poll was thus :

55 for the sitting member ;

26 for the petitioner.

The contest again turned upon bribery : the
 Committee resolved, That the sitting member
 was duly elected : but the House disagreed with
 the Committee, and the election was again de-
 clared void. It was also ordered that no new

(a) Journ. vol. xvi. p. 506.

writ should issue during that session of parliament (a).

In 1717, Mr. Hampden, upon the petition of Wm. Wallis, Esq. against the return of Robert Leeves, Esq. reported, " That the poll was,

For the sitting member 62

For the petitioner — 39

But it being proved, that thirty-four of the sitting member's votes had received bribes, and no one appearing to defend his election, the petitioner was seated in his place. (b)

These entries concerning Steyning, were followed by two relating to the neighbouring borough of Bramber in the years 1703 and 1715. By these it appeared, that it was agreed that Bramber was a borough by prescription, and that the right of election *is in persons inhabiting in ancient houses, or in houses built on ancient foundations, paying scot and lot.* (c)

John Shaft said, That he was well acquainted with Mr. Richard Penfold of Steyning, having married his daughter : That Penfold had been employed for many years before his death, by the Honywood family, as agent for the borough ; and that he had had several conversations with him on the subject of voting : That he had told him that the usual mode of voting was in the inhabitants living in the borough-houses, and paying scot and lot ; but that if an opposition ever

(a) Journ. vol. xvii. p. 213. (b) Journ. vol. xviii. p. 535.

(c) Journ. vol. xiv. p. 286. vol. xviii. p. 155.

happened in the borough, and the matter was brought before a Committee of the House of Commons, it might turn out to be a scot and lot borough. This opinion the witness said was expressed when Mr. Medwin bought the Chequer Orchard; and Mr. Penfold said he thought Sir John Honeywood extremely in the wrong to let such purchases escape him, as at a future time it might occasion an opposition. No houses were then built on the orchard. Being asked in cross-examination, Whether Mr. Penfold had explained what he meant by *borough-houses*? he answered, That they were certain houses in the town that voted; and that there were many other houses, where it was not usual for the occupiers to vote.

Charles Groome, who lives at Steyning, also said, he was well acquainted with Mr. Richard Penfold (who was a surgeon) and being about to purchase in 1780 a house in Steyning, had a conversation with him about the right of voting. Mr. Penfold then said, That in consequence of a threatened opposition to the interest of Sir John Honeywood, it was the intention of the Honeywood family to have a survey of the borough taken, and to apply in the then next session of parliament to get the right restrained to the 101 or 2 voters; for that they did not think themselves safe whilst the right stood recorded as it did, on the Journals, importing it
to

to be in the inhabitants paying scot and lot. The witness added, That he clearly understood Mr. Penfold to mean that the right was in the inhabitants paying scot and lot; and said that his father, whose family had been resident in Steyning more than two centuries, in answer to an observation, that it was strange that some houses should have a right to vote while others had not, had given it as his opinion that they all had an equal right. The witness acknowledged that he had voted for Mr. Lloyd, and was not on friendly terms with Sir John Honeywood.

John Tilly, who lived at Steyning, declared, That he had heard the Rev. Mr. Hopper, who had been Vicar of Steyning near forty years, express the same opinion. The witness had served the office of constable twice; that officer is chosen annually, at Michaelmas, at the court-leet of the borough, in the following manner: The headborough, who is under the constable, returns to the steward a list of persons liable to serve on the jury of the borough court-leet, and usually marks the word *jury* opposite the names of those who are to serve; this jury, summoned by the headborough, nominates a person to serve as constable for the ensuing year; and the constable of the year names another, one of whom the steward appoints. About Michaelmas also,
a court-

court-leet is holden for the *hundred of Steyning*: The houses within that jurisdiction are usually called hundred-houses, to distinguish them from the houses within the borough. The witness was cross-examined, to point out in the list he had made in 1785, the name of any person inhabiting one of these hundred-houses who had been summoned by him, as headborough, to the borough court-leet; and could only name Bannister, who lived in the tan-yard. But in 1789, seven or eight inhabitants of hundred-houses which existed in 1785, were warned. He was also much pressed as to the meaning of a *borough-house*; but persisted in saying, that all the distinction he knew of between a borough-house in the town of Steyning and another house, was, that a borough-house paid a quit-rent to the Lord of the borough; whereas there were other houses in the town, some of which belonged to Bramber, others held of the manors of Charlton and King's Barns; and some were in the tithing of Bidlington. Most of the new houses within the borough have been built within ten years. In a re-examination he said, That there were pieces of land which, in his opinion, were indisputably within the borough, although no houses stood on them. He instanced *Chantry-Green*, which contains about half an acre, and which he said had always been reputed to be waste within

within the borough. He also apprehended that the gardens belonging to the houses within the borough (most of which have gardens) are within the borough; but did not recollect the name of any person now dead who had told him so.

Edward Young, jun. said he had found a *poll* of 1734, in an old bureau of his father's while the first Steyning Committee was sitting. It was delivered by the witness to the clerk of that Committee, and by him to Mr. Marshal, agent for the petitioners appellants, who produced it in the same state he had received it.

Edward Young, sen. (father to the last witness) said, That his father served the office of constable in the year 1734 (which was proved also by the minutes of the court-leet, and the original return of that date) and that the signature to the poll, "*Edward Young, Constable,*" was his father's hand-writing: The rest of the poll was in a different hand. This witness had served the office of constable, and persisted in declaring, that *all* the inhabitants within the borough were summoned to the borough court-leet; but he did not pretend to know the limits of the borough, and acknowledged that he had never known the inhabitant of a *hundred-house* serve constable for the borough of Steyning. Being asked what he meant when he said a *borough-house*? his answer

swer was, Houses within the borough paying to church and poor.

Edward Hards said he had heard that the number of houses in Steyning in 1734, excluding the Bramber-houses, was about 130; but he did not know whether those who had told him so included the Charlton and Bidlington-houses, or not. His evidence was in favour of the extended right; and he said, that the Chequer and King's Arms gave votes in 1734. But it was said by Mr. Charles Brown, that he had given him a very different account.

It was proved that *Nicholas Plaw* joined in executing a return in 1747; and the Rev. *David Jenkins*, who knew him intimately, said, that Plaw and others, in the interest of the Gorings, used to go to Steyning a short time before an election, and boil their pots in the street, to make themselves conspicuous as inhabitants. He understood from Plaw, that the right of voting was in "inhabitants at large, paying scot and lot."

John Groom produced a taxation for the relief of the poor, made by the churchwardens and overseers of the parish of Steyning in 1609, and an assessment for the same purpose in 1734, signed amongst others by Thomas Groome, father of the witness, amongst whose papers it was found. The first rate contained sixty-three

three names ; the second Mr. Marshall inspected, and declared that 132 houses within the town of Steyning were there rated, including the fifteen Bramber-houses and about seven or eight which belong to the manor of Charlton. Amongst the 132 are six or seven women. There are besides twenty-four land-occupiers, making in all 156.

James Hope, who was the returning-officer in 1791, said he had had a conversation with Mr. Brown, steward of the borough, twenty years ago, relative to the Chequer Inn, which was in two tenements. Brown said, " That the house, standing interwoven with the other houses, had never voted, but that it had as good a right to vote as any other." He recollected the leather-sealer and the aleconners, who are officers of the borough, exercising their office at the Chequer and Tan-yard.

John Wheeler, aged eighty-two, who had been forty years parish-clerk of Steyning, had heard his father often say, " That all the houses built upon borough-ground had a right of voting, and that those who paid quit-rent to the Duke of Norfolk, paid to church and poor, and had no relief from the parish, were deemed good votes ;" and denied that his father had ever mentioned to him that ancient houses, or houses built upon ancient foundations, gave the right. He mentioned

tioned three borough-houses which in 1734 were inhabited by women of the names of Bennet, Stone, and Henson; and said that James Martin's house was formerly a stable, and that his father had regretted he had not bought it, as it would have been a good vote. He said there were 105 or 6 borough houses in 1734. The borough and hundred-houses lie intermixed in the town.

Richard Sharpe, aged eighty-four, confirmed the last witnesses, as to Mrs. Stone and Mrs. Henson inhabiting in 1734 two houses within the borough; and mentioned another woman to have been in the same situation, of the name of Whiting. He also remembered Martin's house a stable, and said it was built up before 1734, and carried a vote then. Being asked, "If a house was built on a garden belonging to a borough-house, what it would be called?" He answered, "A borough-house."—Some imputation was thrown on this witness, as having in a conversation given a different account of the right of voting.

Moses Michel, aged ninety-one, said there was a dispute between old people, whose names he mentioned: some insisted that a house built on a garden of a borough-house, was a borough-house; and others required that it should be on an old foundation. He had lived for fifty-three years

years one mile out of Steyning, and was not very pointed in his evidence.

Mr. Medwin, steward of the borough and manor of Steyning, produced certain papers which he had relative to proceedings at the court-baron and court-leet of the borough: they consisted of a book containing entries of proceedings at courts-baron and courts-leet, from 1675 to 1723, and of a paper containing entries of proceedings at the same court in 1726, 28, and 30. The papers composing the book were given him by *Mr. Penfold*, the late steward in 1786; the other paper was since found by him at Arundel Castle. The book also contained entries of the proceedings at the courts-leet, which were usually holden on the same day with the courts-baron: these begin in 1712 and end in 1723. The entries of the courts-leet from 1734 to 1786, were copied into the book by his clerks, from the original minutes of those courts which he had received from the relations of the late steward, and which he produced. He did not know that any court-baron had been held since 1730. He also produced a number of rentals for the borough, which he had received from the late steward; and two original court-rolls of the hundred of Steyning in the 29 Hen. VIII. and 40 Eliz.

To prove that the borough extended beyond
the

the houses, the counsel for the opponents read from the court-book, 1675 to 1723, presentments at a view of Frankpledge, holden the 19th of October, 1722 and 1723, *that the King's high-road within the borough (a)*, leading from the premises of Henry Wood to the shooting-field, was out of repair, whereupon a day is given to the surveyors of high-roads of the parish of Steyning to repair the same under a penalty : Also of the latter date a presentment *that a foot-way* to the end of the bridge in the Faircrofts was out of repair, and that Robert Leeves, the tenant, is to repair the same, on or before a certain day.

Mr. Marshall said that these roads exist at this day.

The following presentments were read, to shew that there was *land* within the borough :

1. From the court-book 1675 to 1723, a presentment at a court-baron 28th September 1699, that " Mary Wilder, widow, who held freely of this borough to her and her heirs, by fealty, suit of court, relief, and the yearly rent of 14d. and for danger-money 12d. a messuage, barn, and croft of land called Britton's (b), lately died, seised thereof, &c. and that Thomas Turner was next heir to the premises, and had alienated

(a) Latin "infra Burgum."

(b) About an acre.

them.

them to John Mordant." Rental 1732 to 37 ;
" John Mordant, a messuage, barn, and croft,
called Brittons, on the north of Steyning,
1s. 2d." Similar entry in the rental 1758 ;
rental 1790, for a messuage and garden called
Brittons ; proprietor Sir John Hon wood :
tenant, William Langford ; rent, 1s. 2d.

2. At the last-mentioned court, a presentment that Henry Stalman held as above, by the rent of 7d, " two crofts of a land-part of a burgage ;" afterwards May's and then Mayer's. Mr. Marshall said he apprehended they were late Brown's. Rental 1732 to 37, " Mr. John Brown, two crofts of land four acres, late Stallman's, 7d." Similar presentment in 1758. Rental 1790, " two crofts of land late Brown's, proprietor, Sir John Ingram ; tenant, himself ; rent 7d.

3. Presentment at a court-baron, 19th Oct. 1722, that Jane Elson, widow, who held of this borough, &c. two crofts of land, by estimation, two acres, on the north part of Steyning, rent 1s. 2d. one acre next adjoining by the rent of 5d. half an acre adjoining, 3d. one rood next the house 6d. one croft of meadow, late Austen's, rent 5d. Another parcel of land upon the north of Steyning, rent 7d. and two crofts of land, commonly called the George Inn, rent 1s. 2d. since the last court alienated and sold to —

T

Tutte,

Tutte, spinster, and William Tutte, her brother, whereupon there happened to the Lord for reliefs, 1s. 2d.—5d.—3d.—6d.—7d. and 1½d. and for danger-money for each 12d. In the rentals 1732 to 37, and 1758 Mr. Borman was charged with the quit-rents of the greatest part of this property, and in 1790 Sir John Honeywood.

4. Presentment at a court-baron, 19th Oct. 1723, That Thomas Dennet held as above, two crofts of land, called the Faircrofts, by the rent 9d. and also “a certain parcel of land in the Faircrofts by the yearly rent of 10d.” By the rental 1703 to 37, Mrs. Dennet is charged for the above; by that of 1758, Mr. Holmes; and by that of 1790, Sir John Honeywood as follows; “For two crofts, called the Faircrofts, proprietor Sir John Honeywood; tenant, Mr. Richard Penfold; rent 9d. — for a parcel of land lying in the Faircroft; proprietor, Sir John Honeywood; tenant, Mr. Richard Penfold; rent 10d.”

Mr. Marshall, steward of the manor of Charlton, produced the court-book of the manor, and said, That there were eight or nine houses in Steyning that pay a quit-rent to that manor, which is very extensive as to lands. He mentioned the George, the Chequer, and King's Arms, now Soane's, as of the number, and several

veral others which are in the center of the town. The tithing of Charlton is in the hundred of Steyning, as is part of the manor of King's Barns.

As much evidence was adduced by the petitioners appellants to prove that the houses marked in the map, with figures from I. to XII. had been newly erected or split, and that the occupiers of them had voted from time to time, which was of course denied by the petitioners respondents ; I have collected the evidence on that head into one point of view.

I. & II.

Laundy's and Michel's

Were said to be newly erected houses. Edward Young senior, said, That his son lives in the second house from *Dog-lane*. His grandfather, who took the poll in 1734, lived in a house built on the same scite. Deeds were produced which in 1671 and 3, convey to *Gilbert Dennett* " a messuage burgage or tenement, with a garden or orchard thereunto adjoining, situate in Steyning, near unto the Singwells, on the south side of the High-street." But James Harding appeared to have a qualified interest in the premises, for in 1678 he grants to Gilbert Dennett all that his right, title, interest, &c. in "all that *late built* messuage or cottage, with the appurtenances adjoining, near to

Singwells." In 1692, Gilbert Dennett conveys to Elizabeth Dennett and her heirs, in consideration of £. 114 "all those *two* burgage-messuages or tenements, *being formerly but one.*" In 1700, these premises by mesne conveyances came to Thomas Dennett, who by a presentment at a court-baron, 10th Oct. 1705, appeared to have alienated to William Wallis and his heirs (*a*), something which he held by the rent of 2d. on which account there happened to the Lord for a relief 2d. and danger-money 12d.

In 1723, William Dennett conveys to Edward Young "all that messuage, tenement, or burgage, with the barn, orchard, and garden, thereunto belonging, situate near certain Wells called Singwells, in Steyning, on the south side of the High-street, there leading to Bramber, in the occupation of the said Edward Young;" and by a presentment at a court-baron, held 17th Oct. 1728, it appeared that Edward Young held freely, &c. one messuage *lately erected*, now in the occupation of Thomas Laundry, at the yearly rent of 2d. Before this entry was read, Edward Young senior, said, That he had heard that his father built a small house at the end of his own, which Thomas Laundry occupied, and after him one Cooper. From this it was argued, that two houses had been newly erected on Gilbert Dennett's premises, which had carried votes :

(*a*) The entry was imperfect.

1st. Laundry's; and, 2d. Michel's, alienated to Wallis in 1700, which now belongs to Sir John Honeywood, and was allowed to be an old borough-house, and the occupiers of which had all along voted. *Thomas Laundry* signed a return in 1727, and his name was on the poll of 1734, without a *quere*, though a witness of the name of Peckham said he had heard he was objected to by the borough-men, on account of living in the alehouse next to Young's, but was not present at the time. Laundry was also head-borough in 1734, and was sworn on the jury in 1736, 38, and 47. Peckham said he built Laundry's house in 1726, and that there was no old foundation there. As to *Michel's* house, Edward Young senior, said he had heard, that the ground on which it stands, which is separated by a gutter from his son's, had been sold off from the premises which his father purchased. Michel's house was proved to have been occupied before his time, by Philip Langford, Simon Smith, William Scutt, and Francis Butcher. Langford executed a return in 1727, and voted in 1734. Smith was on the jury in 1737 and 1741, and an aleconner in 1738. William Scutt signed a return in 1754 and 1761. Butcher was on the jury and a leather-sealer in 1765; on the jury in 1770; and in the list of suitors to the borough court-leet in 1786.

The following entries from the rentals were read relative to this house: Rental 1732 to 1737, a messuage in Singwell-street; proprietor, Duke of Chandos; rent 2d; tenant, Philip Langford. Rentals from 1757 to 1762, The heirs of the late Sir Robert Fagg, proprietors —, a messuage in Singwell-street, rent 2d. tenant William Scutt. Rental 1763 to 1765, Sir John Honeywood proprietor of a messuage in Singwell, rent 2d. tenant William Scutt.

On the other hand, the counsel for the defendants denied that Michel's house was derived from *Dennett*; and read a deed conveying in 1721, a messuage or tenement, land, ground, and other appurtenances, from *William Wallis* to the Duke of Chandos, from whom the premises ultimately came to Sir John Honeywood. This deed recited, that the premises were lately in the occupation of John Dennett; but that they had been conveyed to Mr. Wallis in 1704, by *John Groom*. The deed did not describe the situation of the house; but a witness of the name of Peckham said, that he remembered Michel's house occupied some time ago by one Dennett; and several witnesses said, that Scutt, who voted for this house in 1754, lived in an old borough-house. To this the counsel for the opponents answered, that the single circumstance of a person of the name of Dennett living there
so

so long ago, was not enough to identify the house to be that conveyed to Wallis, as there might be several of that name. They said the Committee would expect more deeds to clear up the point; which however were not produced, and relied upon the evidence of *Easton*, that Michel's house was the only one Sir John Honywood had in *Singwell* at the time of the last election, and the similarity of the rent paid by the Duke of Chandos, viz. 2d. to that paid by Mr. Wallis for his purchase in 1700, whose property was traced by the rentals to Sir John Honywood. As to the declarations of the witnesses that Scutt's was reputed an old borough-house, they answered, that they only shewed their apprehension of what constituted an old borough-house; and accounted for the mistaken tradition of the right.

III.

Prescot's (now) Marshall's

Was said to be newly built. John Wheeler, aged eighty-two, said, That in 1734, the Rev. Mr. Prescot occupied the house which Mr. Marshall now possesses: Prescot had no other house, and his name was on that poll. This house appeared to pay a quit-rent of 4d. to the Duke of Norfolk. Richard Sharpe said, he remembered the building of it. Marshall was on the jury in 1788: But Mr. Charles Brown said, that Hardes had

told him, in a conversation, that Prescot's house was built on a piece of ground taken from his father's garden, and that it had no vote; which Hardes denied. Peckham said that Prescot was, in his presence, rejected in 1734, because his house was built on a garden; but being pressed on this point, he said he was not certain; and that it was after 1734.

IV.

Farley's and Easton's

Were said to have been one house split into two. Presentment by the homage at a court-baron, 28th Sept. 1699, "That Robert Holding, who held freely to him and his heirs, by fealty, suit of court, and relief, when they shall happen, and the yearly rent of 2d. *part of a messuage* and garden in Steyning, lately died seised thereof: Relief 2d. danger-money 12d."

Rental 1720 to 1726: "Thomas Holding for his messuage on the west part of the Church-street, late Groomes; tenant, Thomas Holding; quit-rent, 8d."

Rental 1758: Thomas Holding and Richard Gray, a messuage on the west side of Church-street; rent, 8d. tenants, Thomas Holding and

Rental 1782: Sir John Honywood of him for a messuage on the west side of the Church-street,

street, *late Holding's*, 8d ; occupiers names, Stephen Farley, John Easton. Rental 1790, the same entry. Bannister said the houses were under the same roof. The occupiers were proved to be Thomas Holden (for so he signed his name) John Hunt, Richard Gray, Stephen Farley, and John Easton. Thomas Holden and John Hunt signed a return in 1721, and also appear in the body. John Hunt the same in 1727. Thomas Holden was also on the jury in 1720. Easton signed a return in 1759. Farley was on the jury in 1770, 71, 80, 83, and aleconner in 1784. Several witnesses called by the appellants said, that both these were reputed borough-houses. The counsel for the defendants observed, that no connection was proved between the Holdings.

V.

Peto's

Houses were said to be two made out of one. Presentment at a court-baron 1792, that William Squire, " who held freely, &c. one messuage and one garden by fealty, suit of court, relief, and the yearly rent of 1d. lately alienated and sold the messuage to John Peto and his heirs, &c." who was admitted to the same.

To prove that this house had been divided into two tenements, the following entries were read :

Rental

Rental 1732 to 37 : " Proprietor John Pytoe, messuage and garden, west part of Churchstreet, late Bryant's, rent 1d."

Rental 1758 : " John Peto, messuage and garden, 1d. tenants, John Peto and John Wheeler junior."

Rental 1790 : A messuage and garden, Mrs. Peto ; rent 1d ; tenants, Richard Thornton, Edward Whitten junior. Thomson said he knew Thornton's and Whitten's houses, and never heard but that they were always reputed to be old borough-houses : Joseph Lee said the same thing : Peto, senior and junior, were on the poll of 1734, next to one another, and signed the return, their names being in the body : A *Benjamin Wheel* also voted, but was *queried* on that poll : Wheeler said, that the two Petos lived in 1734, in Thornton's and Whitten's houses, and had no other houses that he knew of : The occupiers were proved to be Peto senior, Peto junior, James Jenner, Richard Thornton, and Edw. Whitten : Jenner was on the jury in 1774 and 75, when he was also an aleconner ; and was also on the jury in 1786 : Peckham, called by the defendants, said, That when he was an apprentice his master bought this house, which was reputed to be a borough-house, and made two votes out of it, by splitting it : He had been at several elections, but never knew any objections made to the inhabitants of these
houses

houses voting ; this, however, he afterwards corrected, by saying an objection was made to one, viz. Whitten's, for which he said Benjamin Wheeler voted in 1734, as he lived there ; but there were two Benjamin Wheelers in 1734. The counsel for the defendants allowed that the evidence might prove that Peto's house was split into two tenements, but denied that it proved that the house was not an ancient borough-house.

VI.

Martin's

Was said to be a new house. John Wheeler said, That he remembered *James Martin's* house a *stable* ; it was afterwards converted into a house ; his father was about to purchase the stable and a piece of ground, and said, if he had built there he should have had a good vote. The house now belongs to Sir John Honeywood. Richard Sharpe, aged eighty-four, confirmed Wheeler, as to Martin's house having been a stable ; he also said, that it gave a vote in 1734 : But Peckham, called by the other side, said it was not built on any part of the stable which is now a cellar. Henry Temple, who was proved to have occupied the house before Martin, voted in 1734, and was sworn upon the jury in 1736, 40, 44, 46, 47, 54, 60, 61, 62, 63. Martin was on the jury in 1765, 67, 70, 71, 73, 74 ; an aleconner in 1775 and 86 ; on the jury in

in 1776, 77, 80, 83: Temple's name was on the poll of 1734, next to the two Petos; and it was said by a witness, that there was only one intervening house which at that time belonged to Madame Stone, who had no faggot in 1734. From this the counsel for the appellants inferred, that he was called up according to the order of his house, and voted in right of what had been described as a stable.

VII.

Muzzel's

Was said to be a new house. Presentment at a court-baron, 23d Oct. 1718: "That Abel Muzzell, who lately purchased of Elizabeth Thurston one toft or parcel of land, upon which a barn lately stood, holden of this borough by fealty, suit of court, and relief, when they shall happen, and the yearly rent of 9d. and for danger-money 12d; since the last court, erected one messuage upon the said toft or parcel of land; and that the said Abel being present in court, paid a relief and danger-money aforesaid, and acknowledged to hold the said messuage by fealty, suit of court, and relief, when they shall happen, and for danger-money 12d. and did fealty." In rentals from 1720 to 1726, and from 1732 to 1737, Abel Muzzell was charged "for a *new* house 9d. which he appeared to occupy himself. In 1758, William Muzzell

Muzzell was charged "for a new house in the back-lane 9d. tenant, Richard Rosier." This house came to Edward Young in right of his wife; he said he thought it a borough-house, the occupiers of it having always voted. Abel Muzzell signed a return in 1727, his name being in the body, and was one of the jury at the courts-leet in the years 1720, 1, 2, and 3. The occupiers since were Rosier and Grevat. Kelsy, called by the defendants, said, the house was always reputed a good borough-house. Grevat voted in 1790.

VIII.

Borcomb's

Was said to be a new house. Presentment at a court-baron, 11th Oct. 1709, "That John Bennett and Mary his wife, who held freely of this borough to him and his heirs by fealty, suit of court, and relief, when they shall happen, and by the rent of 10d. one messuage and one garden, with the appurtenances, lately alienated and sold to John Borcomb jun. and his heirs, a piece or parcel of the aforesaid garden; upon which there happened to the Lord a relief of 10d. and for danger-money 12d.

Court-baron, 11th Oct. 1710, presentment: "That John Borcomb jun. *lately erected and built* a messuage or tenement, and mansion-house within the borough aforesaid, upon a certain

tain piece or parcel of garden-ground, which was lately purchased from John Bennett and Mary his wife, which purchase was presented at the last court holden for the manor and borough aforesaid : And the rent is apportioned *one penny and fraction of a penny* : The said John made fealty to the Lord, and paid a relief of 2d.

Rental 1720 : John Borcomb for a messuage and garden erected, taken out of the above croft, 1½d.

Rental 1784 : John Borcomb for a messuage and garden 1½d. ; arrears 17 years ; occupier himself. John Borcomb senior, and John Borcomb junior, signed a return in 1711, their names being also in the body of it, and the name of John Borcomb was found in three subsequent returns ; and of John Borcomb junior, on the juries at the courts-leet, from 1712 to 1717, and in 1723. Harry Borcomb appeared on the juries in 1763, 64, 66, 67, and signed a return in 1761. This house was afterwards occupied by one Shepherd ; and a witness of the name of Thomson, produced by the defendants, who was upwards of eighty years old, said it had always been called an old borough-house.

On the other hand, the counsel for the defendants produced a lease and release, dated 1722, by which John Gover and Mary his wife, convey to John Borcomb a messuage, tenement, garden, orchard, &c. adjoining to a messuage or
tenement

tenement of the said John Borcomb, some time since erected and built, and now in his own occupation, on the north-west, and to a messuage of his father also John Borcomb, on the south-east. A fine was levied of these premises in 1736; and they now belong to Sir John Honeywood. From this it was argued, that Borcomb junior had two houses, an old and a new one; and that the evidence was improperly applied to the new one, as he might have voted for the old house: But it was observed in the reply for the opponents, that he signed a return in 1711, immediately after his new house was built, and before the old one was conveyed to him.

IX.

Edward Reade's

Was said to be a new house. Court-baron, 10th Oct. 1705: Presentment, "That Edward Burt, who held, &c. one messuage and one garden upon the north part of the street of Steyning, by the yearly rent of 7d. since the last court, alienated and sold the premises aforesaid, unto Wm. Kichenor, and his heirs, &c."

13th Oct. 1707, William Kichenor being one of the homage presentment, that the said William had sold to Thomas Whiting and his heirs, "one piece or parcel of land, part of the garden adjoining

adjoining or appertaining to the messuage of the aforesaid William, and in which the said William now dwells, lying on the east part of the aforesaid messuage of the aforesaid William; and upon the west part, to a messuage or tenement of Sir Robert Fagg, Bart.—rent apportioned $3\frac{1}{2}$ d. to each.

Court-baron, 13th Oct. 1708, presentment : That Thomas Whiting died, seised of “ *a messuage lately erected*, and one garden, upon which there happened to the Lord for a relief $3\frac{1}{2}$ d. and for danger-money 12d.

Rental of 1720, Ann Whiting, widow, a messuage, barn, and stable newly erected and taken out of Kichenor's rent 7d. tenant Anne Whiting. Rental 1784; proprietors names, Sir John Honeywood for a messuage and garden, rent 7d. arrear four years. Occupiers names, Edward Reade, written over James Sharpe, which name had a line drawn through it. This rental, Mr. Medwin supposed, was made by Mr. Penfold, the late steward's direction, some part of it being in his hand-writing. By other rentals, Ann Whiting appeared to possess this house in 1737, Widow Kid in 1758, and Sir John Honeywood, the present owner, in 1782; the tenant being then James Sharpe. Kelsey said he had voted twice for this house: Thomson called it an old borough-house; Kelsey said Mrs. Whiting had
no

no faggot in her house in 1734. The occupiers were Whiting, Thomas Kidd, James Sharp, and Edward Reade; Kidd signed the return of 1741: Reade was on the jury in 1769, 70, 71, 78, 79, 81, and 86, and voted in 1790.

X.

Finch's and Cox's

Were said to be two houses made out of one. By a presentment at a court-baron in 1708, and subsequent rentals, it appeared that the Gorings held "a messuage and garden, south side of the street, late Henshaw's;" in 1708 this was in the occupation of one Peters: In 1726 it was empty, but in a rental "1759 to 1762," Sir Charles Goring is charged for a messuage and garden 7d. tenants Richard Leash and Thomas Finch.

Rental 1790, "messuage and garden, Sir John Honywood the proprietor; tenants William Finch and Edward Cox." A witness of the name of Wheeler, called by the appellants, said that both Finches and Coxes were reputed to be old borough-houses; but Peckham said he remembered the house being rebuilt, and that there were two old foundations there. To this it was answered, that the presentments only mention one house.

XI.

Langford's

House was said to be newly erected. Edward Sharpe said, he remembered when James Lang-

ford's house was not built; a shed to set up deals in was all that stood where it now stands: James Langford was on the jury in 1756, 64, 67, 69, 72, 73, 74, 76, 82, a leather-sealer; in 1762, 65, 68, 72, a leather sealer, and on the jury in 1779, and executed a return in 1774; a leather-sealer in 1780, 81, 83, 84, 88, and on the jury in 1787. Lee said that both the Langfords always voted. (See No. 2)

XII.

The George Inn

Was said to be a new house. Presentment at a court-baron 23d Oct. 1718, That Marchant, who held freely to him and his heirs the west part of an orchard, rent 1s. 2d. late in the tenure or occupation of Henry Parker, since the last court alienated and sold the premises to Robert Leeves, Esq. who was admitted; Leeves voted in 1734. Rental 1758, " Mr. Leeves for the west part of an orchard, late Marchant's 1s. 2d. tenant Robert Smith."

Rentals 1763 to 65, and 1780, " Mr. Soveld for the west part of an orchard, late Marchant's, 1s 2d; tenants, 1st. Wm Stonam; 2d. John Butcher. Wheeler said Stoveld's house is the George Inn, occupied by Welling; but being asked whether he had heard his father say if Wellings carried a vote? he answered, " Not Wellings alone; there was an end belonging to Wellings,

Wellings, which he said was a vote; I mean, the Little End was a vote;" but he had never heard a reason given for this declaration. Joseph Lee said it always voted in his time; but Kelsy said it was once *queried*.

The occupiers were Richard Newport, Robert Smith, John Butcher, and George Welling: Newport was on the jury in 1747. Smith was cryer of the borough-court. John Butcher was on the jury in 1766, on the jury and an aleconner in 1767, on the jury in 1768, headborough next year, and frequently filled these offices afterwards. Welling was on the jury in 1788. The counsel for the defendants observed, that the entries were of the west part of an orchard, after the parole evidence proved that the Inn was built, and were therefore inaccurate; they also relied on the presumption, that the *little end* was an old house, or built on an old foundation.

The counsel for the petitioners appellants having closed their evidence,

Mr. GRAHAM

Said, That an anxiety to prevent any loss of the time of the Committee, had induced him in the necessary absence of Mr. Douglas, to undertake the task of summing it up, which did not properly fall within the sphere of his duty. After recalling to their minds the different rights for which the parties contended, he ob-

served that they agreed in this particular, that the houses must be *within the borough*, which had freed him from the necessity of ascertaining its limits; for when this Committee shall have decided that the right of voting is in the one or the other class of inhabitants, they will have decided a most important question, and will only leave open to future discussion, what from its nature must be so, the question of boundary, which will arise whenever particular houses shall appear to have been built on doubtful situations. He observed that the agreements of 1701 and 1710, speak of a district apparently simple and well understood, *the borough of Steyning*; and declare the right to be in the inhabitants, or inhabitants householders, paying scot and lot, in general terms apparently equally plain. The right is stated not to have been controverted in 1712: a period so near the former, that the interval cannot be supposed to have given birth to a new apprehension of it. It is true that the resolution of 1712 qualifies the word *inhabitants* (which of itself may extend to lodgers and inmates) by restraining it to householders: But when the Committee and the parties were thus employed in defining the right more precisely, is it possible that they should have left their definition so imperfect as to describe by such general words as householders inhabitants, the inhabitants of a few particular houses? Had those words been
used

used in a resolution of the House of Commons, a similar explanation of them would not have been admitted; and though listened to for a moment by the Preston Committee in 1781, was rejected when the absurdity of it was seen (a). It is true that in the neighbouring borough of Bramber a right prevails similar to what the defendants contend for in Steyning; and an argument was formerly drawn from the joint returns for these two places, that the right must have been the same in both: But it is impossible to say which was the borough in those times, and which word is to be considered as the epithet; and therefore if Bramber had not the right to return members to parliament (which is equally probable) the argument is inconclusive. Again, the early return for Steyning-Bramber is evidently a return for *one* borough: But though two boroughs were created out of one, it does not follow that similar rights were bestowed on each. At the point of divergency the rights may have commenced to differ, supposing them previously to have been the same. Accordingly, in 1703 the right of voting in Bramber is emphatically stated to be in the inhabitants of *ancient houses*, &c. and the words, *within the borough*, used in the statement of the right in Steyning, are omitted as un-

(a) 3 Lud. 226 and 245.

necessary. The borough is near to Steyning; and their houses intermix. Is it then possible that in so short a space of time as between 1701 and 1703, the Committee of Privileges should have reported the rights of two neighbouring boroughs so differently, and still have meant the same thing? On the contrary, he thought the difference of expression a strong proof of the difference of right. It was also said, that the borough partook of the nature of burgage-tenure, although the distinctive marks of the burgages were lost: But allowing that the tenure originally was burgage, it does not follow that the right of voting was confined to the tenants of burgages. In Lewis and Shoreham (ancient boroughs in the same county) the right of voting is extended to the inhabitants who pay scot and lot: A circumstance which might be explained by the supposition that the right was anciently granted by charter from the crown to the inhabitants at large, or else actually exercised by them for such a length of time as to create a prescription in their favour. In burgage-tenures, the conveyance of the freehold for a day gives the right; but here no change of the freehold affects the occupier. His friends on the other side, in order to support the proposition they contend for, ought to prove that the same number of houses have immemorially existed in the borough; for if the number shall
appear

appear to have changed from year to year, the presumption will be against their case : But this is the fact. In 1734 all the houses in the *town* of Steyning were rated, amounting to 130 ; it is fair to suppose that the rate of 1609 was governed by the same rule, for otherwise we must suppose that the parish-officers violated their duty, as pointed out by the 43d of Elizabeth : 63 however are all that are rated in that year, from which if we deduct the 14 Bramber houses, the rateable houses in the borough will be reduced to 49 : But it can hardly be contended that 67 houses which might have carried the right, were omitted, when such an omission would endanger the right. In 1701 and 1710 the numbers on the poll are about 70 ; but in 1734 they were increased by 35 : 105 poll that year without opposition, although there was a very strong contest, and five candidates. One appears to have been rejected, as a witness said, because his house was unfinished. Add 105 to the fourteen Bramber houses, the five occupied by women (*a*), and seven in the manor of Charlton, the amount is nearly the number of which the town is said to have then

(*a*) Four women only were proved to have inhabited borough-houses in 1734, by the evidence for the appellants; but in the case of the defendants, Henry Johnson, aged 87, said that in 1734 he lived at the tan-yard, and took a borough-house of widow Martin (the fifth) and then went to vote.

consisted : But if 101 persons only can have the right, as has been contended for by the defendants, how are we to account for 105 having voted ? On the contrary, as there were five women in borough-houses, he might contend that in 1734 one hundred and ten houses carried the right. Mr. Graham then enumerated the houses which appear to have been lately built, and the occupiers of which attended the borough-court-leet, and from time to time voted and executed returns. The evidence respecting these I have collected into one point of view. From this he argued, that in 1710 and 1734, the right was differently understood, and that nothing since could have changed it. But they have attempted to say, that none were ever summoned to the court-leet of the borough but the inhabitants householders of ancient houses. Allowing that this fact were proved, which it is not, the conclusion they draw from it would not be justifiable ; for by law the officers of every court-leet are bound to summon all the inhabitants within its jurisdiction, which if they neglected to do, they must have committed a breach of duty. Besides, there are presentments at that court of lands holden of the borough, and of roads and ditches as nuisances ; which negatives the idea that the borough consists only of houses unconnected with each other, forming a whimsical

cal platform, as it were, totally repugnant to the nature of ancient burghs. There is nothing in the testimony of the old witnesses to induce the Committee to reject their evidence ; though strictly cross examined by counsel about borough and hundred-houses, they remain inflexible in the opinion handed to them from antiquity, that borough-houses were nothing else than houses within the limits of the borough, or, as others say, paying a quit-rent to the lord. The Committee had heard from them the secret opinion of Mr. Brown and Mr. Richard Penfold, stewards of the borough, and agents for the Honynwood family (a) ; they declare the right to be in borough-houses, without defining what a borough-house is ; but the latter is heard to say, though with regret, that if the matter was sifted, it would turn out to be a scot and lot borough ; and therefore an application to parliament was proposed, which probably was not attempted, because it was found impracticable. As to the houses within the manors of Charlton and King's Barns, and the tithing of Biddlington giving votes for the borough of Steyning, he believed it was not unusual in scot and lot boroughs for houses to carry votes, although, strictly speaking, they were in a different district. Whatever judg-

(a) Sir John Honynwood was said to be the owner of sixty of the ancient houses.

ment the Committee might pass on that subject, he trusted that, allowing only so much weight to the former decision as it deserved, they would be of opinion that the evidence was much in favour of that side of the question which he had the honour to support, or at least, that in a doubtful case, the common law-right of voting ought to prevail.

Mr. Graham having finished,

Mr. PARTRIDGE

Said, It was his turn to address a Committee who, for the first time, were to decide finally a right of election, which for some time past had been the subject of much litigation (*a*). This he did under the advantage of a previous verdict in his favour; and though his friends on the other side had had the benefit of a five days hearing, he trusted it would at this moment be thought probable that the evidence he should produce would fully justify the decision of the former Committee. The right of election, he apprehended, was to be collected either from the ancient history of the place; or, if that appeared inconclusive, he thought no better rule could be adopted than the modern usage of the borough.

(*a*) It will perhaps be necessary to remind the reader, that the whole of the appellants case was not disclosed when Mr. Partridge addressed the Committee.

Accordingly,

Accordingly, the first head of evidence which the other side rely on, is what arises from the old returns. But in these instruments of so early a date as the reign of the three first Edwards, or even the fourth of that name, the rights of election are so obscurely defined, that no accurate conclusion can be drawn from them. The electors are usually called *burgenses*: a word which is equally applicable to both statements, and may be referred to a limited as well as more extended right. But it is remarkable that, after having given in a few of those old returns, his adversaries had passed to the 11th and 12th of Charles II. Perhaps they did so, because the first return after the restoration mentions the *constable*; whom in his statement he had declared to be an essential person in the borough. In 1661 the *burgesses* inhabitants and commonalty return; and afterwards the constable, inhabitants, and commonalty. These expressions prove too much for the appellants, and therefore do not establish their case; for commonalty following inhabitants, necessarily means something more, and at all events does not describe accurately an inhabitant householder. There is a return in the reign of Queen Mary by the *burgesses*, *freeholders*, and inhabitants:—an expression more appropriate to the statement of the defendants. In 1700 the constable, inhabitants,

and burgors return ; and the words burgors or burgeffes, he believed, were to be found in all the fubfequent indentures. From this, he only meant to argue that the language of the returns was as applicable to his ftatement as to the oppofite one, and prepared the way for the evidence he had to produce, that the inhabitants at large had never voted for the representatives of the borough. He had hitherto confidered the fole returns for Steyning ; but that formerly Steyning and Bramber made joint returns to parliament, was incontrovertible. Thefe returns are preferved for the fpace of 70 years, during which time the two towns return two members. The continuity and intermixture of their houfes may poffibly fuggeft the reafon ; but at all events he thought the fact afforded a very ftrong prefumption, that the right of election was the fame in both. But if it was fo in the reign of Ed. I. what has occurred fince to alter it ? Mr. Graham felt himfelf embarrassed in accounting for the change, and had fuppofed that a new charger was granted to the inhabitants of Steyning ; but this he had not proved ; and the argument neceffarily prefumed a different right to have exifted till the acceptance of the grant. As to the agreements at the bar of the Houfe of Commons, he obferved that they were the acts of parties, in which the electors of the borough were not concerned. The firft is

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as much too general as the language of the returns ; it is accordingly restrained by the second, but into that the *constable* is introduced, which again furnished a shade of colour in his favour: the other entries on the Journals prove nothing, for they relate solely to complaints of bribery. As it was therefore necessary to investigate the matter farther, he should make a few observations on the topography of the borough, which was illustrative of the usage he contended for : The town of Steyning was composed, if he might say so, of five different districts ; the borough of Steyning, part of the borough of Bramber, houses and lands holden of the manors of King's Barns and Charlton, and part of the tithing of Biddlington. These districts cannot indeed be traced by one line of boundary, the houses and lands within them being interspersed amongst one another ; but in this respect they bear an analogy to many counties and parishes, in the middle of which are found spots of ground that belong to other counties and other parishes. The inhabitants of the four last divisions, he insisted, had no right to vote for the borough of Steyning ; they are within the jurisdiction of the hundred of Steyning, for which the Duke of Norfolk holds a separate court ; and the houses in which they live are, by the tradition of the place, stiled *hundred-houses*, in contradistinction to those of the borough. It
was

was indeed proved that the constable and four or five others came to the hundred-court to represent the borough of Steyning (a); but they did not constitute any part of the court, they merely *shewed their heads* there, according to the expression of the old rolls, as to a superior court: Charlton and Biddlington do the same as separate districts, and seem on that account sufficiently distinguished from the borough of Steyning. To the observation that *all* the inhabitants *ought* to have been summoned to the borough court-leet, he should only reply, That strong facts will generally overthrow mere argument; besides, he had as good a right to assume that certain districts were not part of the borough, and that on that account the inhabitants of them were excluded from the borough court-leet, as his friends on the other side had to assume that they were part of the borough, and that their exclusion was illegal. The committee would see by the history of that court, that from 1730 to 1786, such persons alone as inhabited old houses, were summoned there, and did suit and service. During this time he was instructed that the manner of keeping the court was precisely and uniformly the same, that the juries were regularly appoint-

(a) By the court rolls of the hundred of Steyning, produced by Mr. Medwin, steward of the hundred.

ed, and no inhabitant of a new house ever put upon them; and that the office of constable was regularly filled by an old borough house-keeper. He was not answerable for the conduct of these courts, for they were kept by stewards, who were not appointed by his friends. Accordingly, in 1786 an attempt was made to introduce a new mode of court-keeping; an opportunity of effecting which was furnished by Mr. Penfold's death: His successor held one court in the usual way; at the next introduced one new inhabitant, and at last deluged the borough with an ocean of persons who were strangers to the old house-holders. That new houses were built from time to time, and that the inhabitants of them were not allowed to vote, he should be able to prove from all the polls of the different contested elections, except that of 1734, which was a period of innovation; but which after all did not in his apprehension bear so much on the question as had been imagined; for though some inhabitants of new houses crept into the poll of that date, one of whom (*Laundy*) was tenant to Young the returning officer, who might find it convenient to accommodate him with a vote, they never afterwards presumed to exercise their franchise. This was the case with two persons whom he mentioned, Leeves and Hewlett. The mode in which the elections were conducted seemed to corroborate his statement of the right;
for

for it will be proved that the voters were called up to poll in the order of a list made up at the court-leet, without that noise and confusion which always attend elections in other boroughs. It also accounted for the tradition of the borough, which cannot otherwise be explained, that the number of houses which confer the right of voting are 101. But it has been said, That in 1609 only 63 persons were rated, and that the numbers rated varied every year from that time to the present. May not that variation be accounted for by the dilapidation of certain houses from age, and by certain other circumstances which take place in all towns. It appears from Doomsday, that in the 11th century there were in Steyning 118 *masuræ*, which may very properly be translated ancient houses, or scites of ancient houses. In 1740, one hundred persons only voted, though 140 were rated: In 1754 ninety-eight polled: but the names of four inhabitants of old burgage houses who did not appear, were called over, and one of the old houses had in that year two tenements built on its scite: In 1761 only 91 polled, though many more were rated. He therefore thought that little inference could be drawn from the numbers of the voters, and that *that* little was completely answered by the fact, that the returns were solely executed by the inhabitants of ancient borough-houses. Having

ing discussed the polls and returns, which he allowed furnished the most authentic evidence of the right, he proceeded to remark on the parole testimony of the witnesses called by the other side. This might be divided into two heads: 1st. The declarations of the stewards of the borough; and 2dly, The traditionary evidence of other persons. As to the evidence of Shaft and Groome, concerning the declarations of Mr. Penfold, he observed, That it ought to be received with great caution, as (Mr. Penfold being dead) the witnesses were at liberty to say what they chose, without fear of contradiction. The former witness however says, That he declared the right to be in the inhabitants of *borough-houses*, which, though an ambiguous expression, must be supposed to have been used with reference to ancient borough-houses, from the constant conduct of the steward at all the borough-courts. He adds indeed, That if an opposition was started, it might turn out to be a scot and lot borough; because he knew that in law nothing was certain till decided, and was anxious lest the ambiguity of the Journals might furnish ground for a decision contrary to the real law of the place. Can the Committee suppose that he would have exposed his real sentiments so openly as these witnesses insinuate, if he had had the secret object in view of overturning an ancient right? Tilly only spoke of Mr. Hopper's opinion, which,

strictly speaking, was not evidence. Young might have been interrogated as to the declarations of his father, who had always lived in a borough-house; the silence of his friends on that subject gave him a right to presume that they were afraid to put a question, which he himself was not bound to ask of an adverse witness. According to Mr. Jenkins's account of Plaw's declarations, it was hardly necessary to have a house; to boil a pot was enough: his account differs materially from that of the other witnesses, which would not have been possible, had the right been so clearly ascertained. Hardes was not asked by the counsel before the last Committee, one word as to the right of election: by the Committee he was asked, and said, That *all* houses gave the right, without mentioning *borough-ground*: And Peto, whose declarations he and Anne Greenaway speak to, was an interested person, as he had confessedly either split an old house into two tenements, or built upon new ground. A variation was also observable in the testimony of old Wheeler, who in his first examination was silent as to the houses paying rent to the Duke of Norfolk, or being built on borough-ground. It certainly could not add to the credit of the testimony of these witnesses that they had thus supplied the deficiencies of their former evidence. After thus commenting on
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the different witnesses, he observed, that, comparatively speaking, few persons had been called who actually lived in the borough ; and those who were called had in many respects varied from their former testimony, and differed amongst themselves in their descriptions of the right. But the borough was open to the Committee, and would give ample scope to their enquiries. From it he should produce a crowd of witnesses, of advanced ages, who would inform the Committee of what was done in their time, and what they had heard from their predecessors. The usage established by their testimony would, he trusted, induce this Committee to decide as the former one had done, that the right of voting belonged exclusively to the inhabitants of the old borough-houses, would explain the ambiguity of the Journals, reconcile all the written documents in the cause, and prove the right contended for by the opponents, to be an innovation on the ancient constitution of the borough.

Mr. Partridge having finished, the Committee directed the court to be cleared, and came to the following resolution :

That it is the opinion of this Committee, that the counsel for the petitioners defendants need not bring any evidence to prove that the hundred-houses have no right to vote for the borough of Steyning, unless the counsel for the petitioners ap-

pellants shall state some new reasons to the Committee to induce them to think it necessary.

This being communicated to the counsel, Mr. Milles stated, that he had nothing material to offer upon that head in addition to the arguments used by Mr. Graham; whereupon the Committee directed Mr. Partridge to attend to their resolution in producing his

EVIDENCE.

Examined copies were produced of two indentures of returns, 1 Mary and 1 Eliz. The first was between the sheriff of the county and several persons, "burgesses, freeholders, and inhabitants, of the borough of Steyning;" and witnessed, "That the said burgesses, freeholders, and all other inhabitants of the said borough, had freely elected two burgesses." The second was between the sheriff and several persons "burgesses of the borough of Steyning," and witnessed that "the said burgesses, after their usage and custom, had freely elected," &c.

Mr. *Medwin* being called upon to produce papers, &c. produced the minutes of the courts-leet from 1735 to 1791; also the court-books of the manor of King's Barns, and the manor and borough of Bramber, of which he is steward. Being desired to say how many houses holden of these

these manors were in the town of Steyning? he said there were three houses which paid quit-rents to the manor of King's Barns, viz. Mr. Groome's 1s. 4d. Mr. Fuller's 2s. and Mr. Challee's 1s. 8d. and that all the houses beyond the limits of the borough of Steyning (which he could not pretend to describe) are in the tithing of Biddlington, which is part of the hundred of Steyning. He was then desired to produce the precepts which he as steward had issued to the constables from the year 1786 to 1791, and the lists of resiants returned each year, in order to shew that the practice was altered in 1788, when Mr. Marshall of Steyning was summoned for the first time (*a*). These he produced, but observed that he had no concern in the preparation of the lists, or the summoning of the persons who owed suit and service to the courts; the lists being made out by the headborough or constable, in consequence of his precept, which was in general terms. When he produced the minutes of the court-leet from 1735 to 1791, he begged to read several items from them relative to the inhabitants of newly erected houses; which I have noticed in the proper place.

(*a*) Mr. Marshall's house, formerly Prescott's, appeared to pay a quit-rent of 4d. to the Duke of Norfolk, by an entry in the proceedings of the court-baron 1728.

Mr. *Ellis*, clerk of the peace for the county of Suffex, said, That there were separate returns to the quarter-sessions, of persons to serve on juries from the borough of Steyning, and from the hundred of Steyning, which includes the tithings of Biddlington and Charlton. In 1787 no return of persons was made for the borough of Steyning; upon which the headborough was presented, and fined by the court. Separate returns are also made for the borough of Bramber.

Mr. *Charles Brown* said, That his father John Brown was steward to the Duke of Norfolk for forty years: That he had reason to believe that after his appointment to the stewardship, he always took the poll at elections, and once before. He had, about twelve years after his father's death, at Mr. Penfold's desire, searched for old polls amongst his father's papers, some of which he found and gave to Mr. Penfold. These he now brought with him, and in particular, produced a poll, dated 23d Nov. 1724. On his cross-examination he said, that his father was an attorney, and in the interest of the Honywoods and Faggs. The earliest election he remembered was that of 1741; at it his father was writing, and taking the poll for somebody; but he did not know whom. In 1761, his father also took the poll, he believed, for the constable;
but

but was not certain. At that election he was also in the Honywood interest, and voted. The witness himself had never voted for the borough since the death of his father. Mr. Bond now offered the poll of 1724 to the Committee; but *Mr. Douglas* objected to it as incompetent evidence. The usual course is to search for such documents, either in the public repositories of a place, or amongst the representatives of the person whose duty it was to fill a particular station; but these searches had not been made in this instance. The paper itself imports, that the poll was taken before one *Thomas Foreman*. Why were not his executors applied to? The steward of the borough is not *ex officio* returning officer; the probability arising from the evidence is, that in this case he was an agent for the party, supported by the interest of the Faggs. It is therefore a partial representation of the poll; or, even allowing it to be a copy, it cannot be received till the original is proved to have been lost.

Mr. *Bond*, on the other hand, said, That as the same paper had been received after debate by the former Committee, he was at a loss to find a reason why Mr. *Douglas* should expect to have it rejected now. He thought it was a point of general importance, that the rules of evidence laid down by former Committees should be followed

by others, as otherwise a subsequent Committee would not merely be a new trial, but one of so uncommon a nature, that it would be impossible for a counsel to advise his client how to act. He observed that the paper on the face of it did not purport to be a copy, nor was there any evidence that any other original ever existed. On the contrary, it was said by the witness who produced it, that the steward of the borough, no matter whether his conduct was right or wrong, usually takes the poll at elections; and this assertion was not disproved, although the present steward might have been called by Mr. Douglas to contradict it, and to produce the real polls which must be presumed, if they exist, to be in his custody. He denied that any apprehension could be rationally entertained that Mr. Brown would misrepresent or mistake the real state of the poll. If the paper now produced was an original, he was entitled to have it read; if it was a copy, his friends had made the best possible search after the original, having searched amongst the papers of the late Mr. Brown, and given notice to Mr. Medwin to produce all papers whatsoever.

Mr. Douglas in reply, said, That if he was to entertain no hopes that this Committee would decide differently from the last, he was not sensible what

what benefit could be derived from the constitution of an appellate jurisdiction to revise a former decision. The courts of law do not entertain such a maxim; for one of the most common grounds on which new trials are moved for and granted, is the mistake of the former judge in the admission of illegal evidence. His friends on the other side seemed to have foreseen the necessity of a search, whether the paper now tendered was an original or a copy; but in either case the search must be legal, and be proved to have been well made; and therefore in either case it was necessary to apply to the representatives of the returning officer, whose duty it was, even before the act of the master of the Rolls, to take the poll himself, if one was demanded, or to appoint a proper person to act as poll-clerk for him. Polls and copies of polls have been received by Committees when authenticated by recorders, and such persons whose offices place them beyond the suspicion of partiality; but that was not the case with regard to stewards of manors, unless they were appointed to be poll-clerks by the returning officers; in which case it was fair to presume that they did their duty. Finally, he observed, that the form of this paper differed much from the uncontested poll of 1734, which was signed by Young, the returning officer.

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The Committee decided, *that the paper offered in evidence is not admissible.*

This resolution being communicated to the parties, Mr. *Charles Brown* was again called, and said, That besides the last-mentioned poll, he found amongst his father's papers, polls of the years 1727, 1740, 41, 54, and 61. The paper of 1727, together with the annotations and indorsement, was entirely in his father's handwriting; but he believed his father was appointed steward about the year 1734.

To prove a farther search for polls, *Richard Samuel White* said, he had searched several times in the parish-chest, kept in the parish-church of Steyning, the inspection of which was given him by the churchwardens; but found no polls or rates. He had never heard of any other place for depositing the public records of the borough. Mr. Medwin being asked, Whether he had received any polls from his predecessors? said he had not; nor did he know of any officer in the borough whose province it was to keep polls, or in whose possession they were likely to remain. Mr. Douglas still objecting to the poll of 1727, because the personal representatives of the returning officer had not been applied to.

Mr. Partridge submitted to the Committee, That it ought to be received, because it came from a
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quarter on which no suspicion could attach, Mr. Brown having been appointed steward about six years afterwards, and having, by the evidence of his son, taken the polls in his stewardship; which destroyed, as he contended, the presumption that they were taken by the returning officers. He also insisted that he had made every possible search, except among the representatives of *Hills*, before whom the poll was stated to be taken; which he hoped the Committee would not in strictness require. He had not taken a similar objection to the rate of 1609, which however he might have done, as no connection was proved to exist between the persons in whose possession it was found, and the parish-officers in the reign of James I. Finally, he urged the hardship of the case, and hoped the Committee would not exclude any evidence which might throw light on so momentous a discussion.

Mr. Douglas in reply, said, That the hardship, if any, originated from the nature of the evidence offered; for which his friends had only themselves to blame. It constituted no answer to the objection he had urged; nor did it appear to exist with respect to the poll of 1734, which was found, not in the parish-chest, which probably contained nothing but homilies, but with the representative of Young, the returning-officer. He could also
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have proved, had it been required, that Grome who produced the rate of 1609, was the descendant of Groome, who was at that time overseer. He insisted that there was no legal evidence that the paper in question was either an original poll, or a true and faithful copy.

The Committee having deliberated, resolved, *that the paper offered in evidence is not admissible.*

The next poll offered in evidence was that of 1740; but before this was tendered to the Committee the counsel for the defendants called Mr. Medwin, and asked him whether he did not take the polls in the years 1790 and 91, and whether they did not remain in his possession till he produced them before the Committees? to which he answered in the affirmative: But in his cross-examination, he said he took those polls not of course as steward, but was appointed poll-clerk, and sworn under the late act of parliament.

William Peckham, aged 84, knew Mr. Brown, the steward, and remembered the election in 1740. Being asked who took the poll at that election? he said, Mr. John Brown; but in his cross-examination he said, that a Mr. Holmes also, an attorney, took the poll for the other party: "They both wrote down as far as he knew." The constable called over the voters. The witness being asked whom he voted for at that election?

election? named a wrong candidate.—Mr. Partridge then proposed to deliver in the paper purporting to be a poll taken in the year 1740, and to have it read in evidence. Upon this,

Mr. Douglas said, That the paper seemed to him to bear upon its face stronger marks than any of those which had preceded it, of an instrument taken for the use of a party, and not by a public and impartial officer of the court. Opposite to one of the votes (*Philip Long*) is an annotation “queried by the constable;” which seemed to him to be the remark of an agent, and not either of the returning-officer, or any one acting under him. Again, towards the conclusion, *John Borcomb* is said to have been “refused by the constable, because his house was not good;” and his tender is not noticed, probably because it was against *Brown’s* interest; whereas other tenders in his favour are accurately recorded. He begged the Committee to compare this with the only well authenticated poll given in, that of 1734; and insisted that the usage of the borough was not that the steward should take the poll (except when he also acted in the capacity of poll-clerk) but that it was taken by the constable himself, who on all hands was proved to have called over the names of the voters. In
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the present instance, two persons at least were seen writing ; which, as they differed in politics, afforded a strong presumption that they were engaged by the contending parties, and must on that account have been influenced by party views. On the other hand,

Mr. *Partridge*, in support of the evidence, said, That the paper purported on the face of it to be the poll of 1741, had an indorsement to that effect, was in Mr. Brown's hand-writing, and mentioned the borough, the candidates, and the voters. As to the annotations observable on it, he was not aware how they possibly could impeach its credit ; as it is usual at contested elections to take down the objections made to particular votes ; and they could not be more properly recorded than in the body of the poll. Mr. Douglas had said, that the regular mode was to cast up the numbers for each candidate as was done in the year 1734 ; but the observation could not apply to the poll he now offered, if it was intended to point out a defect, because a column is assigned to each of the three candidates, and numerical figures are placed opposite to the names of the voters ; so that by a glance of the eye, it is perceived that sixty voted for one candidate, thirty for the other, and only three for the last. The majority

majority was so great as to render the signature of the returning-officer unnecessary, which had been thought so essential by the other side. He had only therefore to consider the proof laid before the Committee of the usage of the borough, and the part which Mr. Brown took in that election. And here he observed that the only contested elections which the witnesses had spoken to, were those of 1740, 41, 54, and 61; and that in those years polls are found in the handwriting of Mr. Brown. During Mr. Penfold's stewardship no contest happened; but Mr. Medwin, his successor, is proved to have taken two polls at the only elections which happened during his employment, at which he was sworn according to the form of the oath appointed by a late act of parliament. This evidence, in his opinion, established the usage he had contended for. That Mr. Brown had in consequence of his employment as steward, really acted in the capacity of poll-clerk, he collected from the evidence of his son, who remembers to have seen him writing; and from that of Peckham, who had declared that he took the poll: And though the latter witness had forgot the party for whom he voted, as the period was so distant, the Committee would think the mistake trivial, as it was well known that voters frequently come
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to poll without knowing the names of those they are to vote for, till whispered it by the bystanders. If the evidence on this head was deemed insufficient, he could not conceive what would suffice. In his judgment it was so conclusive, that he would dare his friends on the other side to produce any writing of Mr. Holmes, or any other person, to contradict the poll taken by Mr. Brown.

Mr. Douglas, in reply, said, That he must excuse his friend for insisting that this paper differed from those which the Committee had already rejected, as he could not with any propriety ask the Committee to decide thrice the same case. The indorsement on the paper; indeed, precluded all idea that it was a copy; but he was not on that account disposed to allow it to be an original poll, as it was taken by the agent of a party. As to the annotations of the writer, he did not object to them because they were on the poll, but partly because they appeared to be in the stile of some other person than the constable or his agent, and partly because they must have been written after the poll was closed, and had not, on that account, the authority of notes taken at the time the particular discussions arose. It was true that the figures placed opposite to the names, furnished an easy rule

rule for judging of the numbers who voted for each candidate ; but his objection on the want of formality still remained unanswered, for in the poll of 1734 the lines are ruled, the poll is stated to be on so many pages, the numbers are accurately summed up, and the majority upon the whole declared. It was Brown's duty to be more accurate than his predecessor, instead of being more confused, and to have authenticated the poll by something more than his signature ; which in the grossest fabrication would hardly have been omitted. He denied that any such usage as the other side insisted on, had been proved ; for Medwin's conduct at the two last elections can never be so called ; and to say that Brown took the polls during his stewardship, was calling those papers polls which the Committee had decided not to be so. As to the challenge to produce a contradictory poll taken by Holmes, he could scarcely accept it, unless the Committee would adjourn for three weeks to allow a search for a paper, which after all, by the argument of his friends on the other side, would not be allowed to contradict the regular poll of Mr. Brown.

The Committee having deliberated, resolved,
That it is the opinion of this Committee, that there is sufficient reason to suppose that there does not exist any original poll taken by the returning-officer at the election in 1740 ; And,

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That

That the paper offered, be received as authentic minutes of the election in 1740 for the borough of Steyning.

These resolutions being communicated to the counsel, the paper was delivered in and read, and was intituled as follows : “ Suffex, a poll taken at an election of a member for Steyning-borough, in the room of Sir Robert Fagg, Bart. deceased, this 26th day of Nov. 1740, by John Wheeler, constable. Candidates, Hitch Young, Esq. Sir Charles Goring, Bart.”

The next poll offered by the defendants was that of the year 1741. Concerning this, Mr. Charles Brown said, That he remembered that election, although he was then very young. He saw his father there writing; and had no doubt he was taking the poll. The whole, together with the marginal notes and indorsement, is in his father's hand-writing. On his cross-examination he could not say that this paper was what he saw his father writing, or that he did not act as agent or friend for one of the contending parties, or that nobody wrote besides his father, although he could not recollect that any one did. William Peckham also said, That he remembered that election, and that Mr. Brown took the poll; but being asked if any other person than Mr. Brown took the poll, or assisted in taking it? he answered, “ That he did not know,

know, without Holmes did ; he believed he took the poll as well as Brown." *He* gave his vote to Brown. The paper being now tendered in evidence,

Mr. *Douglas* said, That he should rest this question on a different principle from what he had formerly urged, which indeed he would have submitted to the Committee sooner, had his learned friend on the other side dropt the smallest hint that the paper just received by the Committee ought to be received as *authentic minutes* of the election. He observed that a poll was in reality an appeal from the judgment of the returning-officer on a shew of hands ; it must from its nature therefore be taken in writing, as no human memory could be sufficient to ascertain the event of such a contest. But is it not highly probable, that one of the contending parties would insist on the constable taking it himself, or appointing some indifferent person whose duty it would be to take it impartially ? An election may be said to consist of the returning-officer and his clerk, who form the court ; and of the electors, the candidates, and their agents, who constitute the parties : But any notes which any of the parties in a court of justice take at the time of a trial, can never be received as evidence, except the person who took them declares on his oath that he

took them at the time the circumstances happened, and meant to take them without any partial views. If they are written after a lapse of time, the fallibility of human memory destroys their authority; and if taken on the spot, are not evidence of themselves, but are merely admitted to refresh the memory of the witness upon oath. In the present instance, there was no evidence that Mr. Brown wrote these minutes during the continuance of the poll, nor can he be called to declare on his oath that he took them fairly, without any interest or any wish to disguise the truth. The resolution of the Committee, which he did not ask them to rescind, declared the writing to be *minutes*; let them then be properly authenticated as minutes, which could only be done by calling the writer of them on his oath to the bar of the Committee, or having taken the proper and legal mode of perpetuating his testimony.

Mr. *Partridge*, in answer, said, That he certainly was not disposed to retract the evidence he had offered, because, in his opinion, if ever one case was like another, the poll of 1741 was similar to that of 1740; or if any difference was observable, it was in favour of the former. He submitted, that from the evidence of Brown and Peckham, there was not the smallest

smallest reason to suppose that the poll was taken by any other persons than Brown the father, and Holmes; which rendered it impossible for him to strengthen the authority of the paper by any other evidence than the inspection of the instrument itself, which he insisted bore on its face the strongest marks of authenticity. Columns are left under the names of the candidates; lines thus ——, mark those for whom the electors voted; and the numbers are finally summed up. The only circumstance in which it differs from the poll of 1734, is the want of the signature of the returning-officer, which surely is sufficiently supplied by the circumstances in evidence, and the fact that the whole paper is in Brown's hand-writing. He could not imagine that it was incumbent on him, after such a lapse of time, to bring forward the very person who took these minutes, supposing them not to be the poll; but hoped the Committee would extend to them the rule by which courts of law allow deeds to prove themselves after thirty years, and the counterpart of a deed to be given in evidence, provided the first part cannot be found.

Mr. *Douglas*, in reply, said, That it was fortunate for him there was such a maxim as *nullum simile est idem*, which, notwithstanding the assertion of his friend that this paper was similar to

that of 1740, enabled him to contend that it was not the same. He insisted that the testimony of Mr. Brown was necessary to authenticate the paper as minutes; and that it should have been perpetuated by the legal means, if it was meant to have been used. As to deeds proving themselves after a length of time, he answered, That they were instruments of peculiar solemnity to which many privileges are annexed; but the exception establishes the general rule he contended for, instead of weakening it. In a word, the paper now tendered to the Committee was not proved to be an original poll, did not purport to be a copy, and was not admissible as *minutes* of what passed at the election.

The Committee having deliberated, adjourned till the following morning, when they resolved, *That the paper offered by the counsel as the poll taken at the election for Steyning, in the year 1741, be not received as such.* At the same time the chairman informed the counsel for the defendants, that if they found it consistent with their cause to offer the paper in any other way, they were at liberty to do so: upon which

Mr. *Partridge* said, That he now offered the paper not as the poll of 1741, but as the next best evidence of what passed at the election in that year; there being sufficient reason to suppose, according
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to the resolution of the Committee, that there does not exist any written poll taken by the returning-officer at that election.

Mr. *Douglas* again objected to the admissibility of the paper, on the ground that it could not be received as an account of what passed at the poll of 1741, except it were proved to be the poll itself, or a faithful copy of it. At best, this was proved to have been written by an agent, and must therefore have been taken with some private view, and of course with partiality. But had it been taken by one of the contending parties, it could no more be evidence than a letter written by him to his friend giving an account of the election; which, if it had not been submitted to the judge at the time, and to the cross-examination of the other side, would not be listened to for a moment. He laid it down as a general rule, that wherever a paper, not a deed, contains the relation of a fact, which the writer, if alive, must be called to prove; that paper, if the person is dead, can never be received as evidence to prove the truth of its contents.

Mr. *Partridge*, on the other hand, insisted, That the paper was evidence in the point of view in which he offered it; namely, as the best evidence of what persons voted, next to the poll itself; there being

the same reason to conclude that no poll was taken in 1741 as that none was taken in the preceding year. Both Mr. Charles Brown and Peckham had said, That they saw no persons writing, except Brown and Holmes; which, in his opinion, amounted to a proof that they acted as cheque-clerks, whose notes were the next best evidence, after the poll itself taken by the returning-officer. The paper in discussion was also produced from the best quarter; namely, from amongst the papers of Mr. Brown, and proved to be entirely in his hand-writing. It was therefore as strong as the declaration of Brown; and by whatever name it might be called; was, he thought, in the absence of the poll, admissible as traditionary evidence of the usage of the place.

Mr. *Douglas*, in reply, said, That great part of his friend's argument had been built on this fallacious ground, That whenever the best evidence is not to be procured, the only remaining evidence shall be resorted to: a position which he had laid down without considering that all evidence must be of a legal nature. By that rule, if the poll were lost, a calculation of votes made by an agent upon promises, or a letter giving an account of the election, would be admissible. Such papers might be noticed by a historian or antiquary,

quary, but could never be listened to in a court of justice. Mr. Partridge had also argued, that no poll was taken; but the legal presumption is, that a poll was regularly taken. Why therefore did he not enquire of the representatives of the returning-officer, or at any rate search for the minutes of Holmes, and by a comparison of the two, prove the truth of Brown's? As to the remaining ground, he held it to be perfectly untenable; because, though the declarations of Mr. Brown might be evidence of reputation in a general question of right, they never can be admitted to prove particular facts, such as what individuals voted or did not vote at an election.

The Committee having deliberated, resolved, *That the paper offered, be not admitted as evidence of what passed at the election for Steyning in the year 1741.*

This resolution was read to the counsel, and they were at the same time informed, that the resolution mentioned in page 322, had been rescinded by the Committee; and that a motion being made and the question put, that the resolution, mentioned in page 321, be rescinded; it passed in the negative.

Mr. *Charles Brown* now again made his appearance, and produced a paper in his father's hand-

hand-writing, purporting to be a poll taken in the year 1754, which he had also found amongst his father's papers. In the same hand were indorsed the words, "Steyning-poll, 1754;" but the witness was not present at that election.

Joseph Curtis was present at that election, and said, That Mr. Brown took the poll; his reason for thinking so seemed to be, that the common crier called up the voters; and that Mr. Brown directed him as to the mode of doing so. He also gave his vote to Brown; but he could not swear that no other person was writing, or that Brown was appointed poll-clerk by *Wheeler*, who he said was the returning-officer. Holmes was present at the election, and in a different interest to that of Brown. He also said, that four or five votes were *queried* by Brown, because not given for houses built on old foundations. The paper being offered in evidence,

Mr. *Douglas* said, That he presumed it differed from the others, and was to be supported by the testimony of the last witness, as Brown the son was not present at that election: But the memory of that witness, which he had rather attack than his integrity, was too weak to be relied on. He can be supposed to remember no fact better than who was returning-officer, especially as he had said that he knew him as a neighbour; but he declares that

Wheeler

Wheeler filled that office instead of *Foreman*, who by *Brown's* poll appeared to have been constable. If his memory, on the other hand, was good, it impeached the credit of that pretended poll. But he had also said, that four or five votes were queried, whereas two only appear to have been so treated; one without having any reason assigned; and one not for the reason given by the witness, but for the receipt of alms. He also mentioned some circumstances which had fallen from *Curtis*, relative to the sale of a house, to prove that his memory was equally treacherous with regard to late as to more remote transactions.

Mr. Bond, in answer, said, That the objection to the evidence offered, seemed to rest solely on the credit of the last witness, as no objection had been taken to the evidence in point of law. It was said, that the witness had forgot the name of the returning-officer; but the source of his mistake was apparent, *Wheeler* having been constable in 1760, though not in 1754; it could not therefore discredit the paper, as it was in evidence before the Committee, that *Foreman*, who appeared by it to have been returning-officer, was in that year constable. As to the circumstance, that all the doubtful votes were not *queried* on the poll, he thought it was immaterial, as he did not think that a poll-clerk

clerk was bound to do so: it could not therefore affect the credit of the witness, who spoke to a fact which ought not of necessity to appear on the poll. On the whole, he trusted that the inaccuracies of the witness were not of such a nature as wholly to deprive the petitioners of his evidence; and that the Committee would advert to the usage, the proof of which had been strengthened in this instance, that the polls were constantly taken by the stewards of the borough.

Mr. *Douglas*, in reply, said, That he did not mean to discredit the witness to such a degree as to justify a motion to commit him; but merely to argue, that, as he had pledged his memory to certain facts, which had turned out otherwise, he must be presumed to be equally incorrect as to the others he had deposed to. The witness had certainly the same reason to remember Wheeler as he had to remember Brown, since he declared that they acted in concert in admitting or rejecting votes. He requested the Committee to advert to the arguments he had urged against the former polls, which he thought were fully more applicable in the present case. As to the usage which had been so much relied on, in his opinion, it amounted only to this: That for twenty years Brown was agent for one party in the borough, and Holmes for another. He could not conceive that it was the business of the
steward

steward of a noble Duke to take the poll at an election for a member of the House of Commons ; as if that were the case, and there happened to be no steward, his Grace must officiate in person.

The Committee resolved, *That the paper offered in evidence is inadmissible.*

The poll of 1761 was not immediately brought forward, and the counsel for the defendants seemed inclined to waive it ; but when they asked a witness of the name of Lee how many voted in that year, the question was objected to ; as the best evidence was the poll, which at so late a date must be presumed to have been regularly taken. Upon this the poll of 1761 was offered in evidence under nearly the same circumstances as the former polls, except that there was no evidence that Holmes was seen writing as well as Brown, or that the returning-officer took the poll himself; the former arguments were repeated, and the court being cleared,

A motion was made, and the question being put, that the paper offered by the counsel, purporting to be an original poll, taken at the contested election in the year 1761, be received as such.—*It passed in the negative.*

Resolved, *That it is the opinion of this Committee, that there is sufficient reason to suppose that*

that there does not exist any written poll taken by the returning-officer at the election in 1761.

Resolved, That the question proposed by Mr. Partridge to Joseph Lee, and objected to by Mr. Douglas, be put to the witness.

On this resolution, the counsel for the defendants asked the witness what number of persons voted at the election in 1761? to which he answered, That he did not exactly remember the number; but there were between ninety and an hundred.

The polls being thus disposed of, the rest of the evidence may be ranged under the following heads :

1. To rebut the proof that new houses had been built; and that the inhabitants of them had voted at elections, and attended the borough court-leet.

2. To prove by parole evidence the usage of the borough.

3. To shew that all the returns were signed by the inhabitants of old borough-houses.

4. To establish the usage of the borough court-leet.

5. To shew that the language of the returns for Bramber was equally general with that of the returns for Steyning, although the right of election was more confined; and,

6. To

6. To impeach or to establish the credibility of witnesses.

The reader will find the evidence on the *first* head collected together in that part of the case which relates to the erection of new houses; and therefore I shall only make a general remark here, that the counsel for the defendants proved by several witnesses, and by the rate of 1734, that it was not an unusual thing for a person to live in one house and be rated for another: a witness, of the name of Bannister, said, that in 1785, he was rated for a house that he did not inhabit; which was all the property he had in it.

On the *second* head the counsel for the defendants, having proved the death of *Richard Gray*, read the evidence he gave before the former Committee; omitting such parts of it as referred to a comparison of papers, amongst which were the polls rejected by the present Committee. He said he was eighty-seven, and had lived at Steyning till 1750. In his time there were 100 borough-houses, and about fifty other houses, called houses in the hundred. He and his father, who died in the year 1744, aged seventy-five, were owners of borough-houses and attended the borough court-leet; but not that for the hundred. The inhabitants of the hundred-houses were not admitted to the borough-court-

court-leet. The jury used to go the bounds of the borough when the borough court-leet was held ; but never went beyond Edward Young's house, which was the extent of the borough on that side, and two little borough-houses, called Giant's Castle, at the other extremity. They did not go the hundred houses. At all the elections he remembered the voters were generally called up to the market-house, to poll in the order in which the houses stood, beginning at Edward Young's. He remembered the election in 1734, and assisted at it, being, as he said, trained up to it ; and he declared, that the inhabitants of hundred-houses did not attempt to vote. He said the same thing of that of 1741, and described the right of voting to be in ancient burgage or borough-houses, or houses built on the foundation of burgage-houses. This he had heard from his father and several other substantial inhabitants, amongst whom he named Mr. Brown, the steward.

Joseph Curtis declared, That at several elections which he remembered, persons, whom however he did not name, were rejected by the constable and Mr. Brown, because their houses were not built on old foundations.

John Bannister also gave his testimony in favour of the defendants.

Mr. Charles Brown declared, That he had
heard

heard his father and several others say, That the right of voting was in the occupiers of ancient houses within the borough, or houses built upon ancient foundations within the borough, paying scot and lot. He added, that he did not recollect having heard of a different right, but had not been much at Steyning within the last thirty years.

Stephen Rickwood, who lived in Steyning from 1741 to 1761, gave a similar description of the right of election. He lived in the *Chequer*, a hundred-house, and often attended the hundred court-leet, which was held at his own house, but not once the borough-court; nor did he ever vote at an election for Steyning.

Henry Johnson, aged eighty-seven, also described the right of voting in a similar manner. One of his expressions was, that it was "in old ancient standard borough-houses." He declared he had never heard a different description of it; but it was said, that he had, in a conversation, given a different account of it.

Joseph Lee had heard old people, now dead, and amongst others, Mr. Brown and Mr. Penfold, the stewards, say, that the right belonged to a man that lived in a borough-house, and did suit and service to the borough-court, and paid scot and lot. He went to Steyning in 1750, and lived twenty-one years in an old

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borough.

borough-house. He was constable, and said that by Brown's direction, he only warned the inhabitants of borough-houses; and that he did not warn Borcomb, because he lived in a new house. Mr. Leeves built a new house in Chantry-Green, upon burgage-land, and wished to have it vote, but could not succeed. This he heard from Mr. Holmes and Mr. Leeves, but there was a doubt if the house was at that time finished; and the witness could not explain what he meant by *burgage-land*. He also said, that Mr. Penfold made a turnpike-road go round a certain house, because otherwise it would have destroyed a vote by going over an old foundation. He had heard Mr. Holmes also say, that none had a right to vote but they who lived in borough-houses; but he did not explain what he meant by a borough-house. The witness had not mentioned this conversation till now. He said, the borough-houses in his time were 101 or 102. He remembered the election of 1754; between 90 and 100 persons voted at it, the voters were called up in the order of their houses. The first was Young, the next Scutt, which was meant to exclude Laundry.

Witnesses of the names of *Kelsy*, *Langford*, and *Walder*, gave a similar description of the right. The first said, that Hardes had given him, in a conversation, a different account of
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the right from that which he had given the Committee.

Thomas Thomson, aged near eighty, said, No new house gave the right of voting, even if built on borough-ground, except it was built on an old foundation; neither would an old foundation give a vote without there was a house built on it. He had always been told that persons who were bound to attend at the borough court-leet had the right of voting; but never heard that any were bound to attend there but the inhabitants of old borough-houses.

Mr. Richard Penfold, son of the late steward, said, That he had always heard his father say, that the right of election "was in a certain description of houses, called ancient borough-houses." He never seemed to doubt of the right. The witness said, *Moses Michel*, called by the appellants, had told him he knew nothing of the borough of Steyning. On his cross-examination he said his brother succeeded his father as agent for Sir John Honeywood. The conversation with Michel, whom he knew but little, was short. Being asked whether his father had explained to him what he meant by ancient borough-houses? he answered, "those particular houses that had a right of voting, and were built on the foundations of ancient-houses within the borough."

William Peckham gave a long testimony, and the same account of the right. An imputation was thrown on his character as having once given a different account of it. His evidence was rather confused. He was the proprietor of an old borough-house.

The counsel for the defendants being about to call other witnesses to the reputation of the right of election, an honourable member of the Committee observed, That so many had been already called, that he did not think any additional weight could be given to the evidence on that head. Upon which Mr. Bond said, That it was not usual for counsel to desist without a similar intimation from the court, which he was very ready to profit by. He should therefore close his evidence on this point, as he understood that his friends on the other side did not mean to call any other witnesses than to the characters of those who had already appeared before the Committee.

As to the *third* head, Rickwood was shewn the return in 1741, and said, That all the persons who signed it, to his knowledge lived in old borough-houses. He said the same as to the returns of 1747 and 54, except that he did not know the houses of James Ashley and Nich. Plaw, who signed the former; or of John Easton, John Elliot, and Emery Strecher, who signed
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the latter. The return of 1761 was also signed by the inhabitants of old borough-houses only. The counsel for the appellants proceeding here to minute down certain names which were found in other returns already given in to the Committee, Mr. Partridge objected to the regularity of this proceeding, and insisted that his friends on the other side should confine themselves to such returns as he might now produce, of which he allowed they were at liberty to make what use they pleased, by way of cross examination. The Committee decided, *That the objection made by Mr. Partridge was a valid objection.* But when the evidence for the defendants was closed, Mr. Douglas stated to the Committee, that before Mr. Bond proceeded to sum up, he proposed to read the names of various persons who appear to have signed certain returns already produced, and also to read from the court-book (1675 to 1723) and from the minutes of the courts-leet (1734 to 1791) the names of various persons who appear on the homage and jury; and likewise to state the names of various persons who appear upon certain rentals, at present before the Committee. Upon this,

Mr. Bond said, The minutes, rentals, and returns had been produced by him, merely for certain purposes; and that he could not imagine it

was now competent to the other side to use them for other purposes, at a time when he could have no opportunity of answering the new case they might make. If they were allowed to bring forward new evidence, he would, in common justice, be entitled to answer it; and thus the case would never come to a conclusion. He insisted that the counsel for the opponents had slipped the opportunity of profiting by these papers, as the cases of both parties were already closed.

Mr. *Douglas*, in answer to the objection, said, That in contemplation of law, every word of the several documents alluded to was in evidence before the Committee, although they had not been read in point of fact. He therefore now only proposed to read certain parts of them, in order to direct the attention of the Committee to the answer he had to give to the case of the defendants: a liberty which, without doubt, he might take in his reply, by reading them as parts of his speech. It was absurd to say that a paper produced by one party, might not be used by the adverse party to any purpose he chose. If the defendants made a case, avoiding his case, he was clearly entitled to a *reply* after they had summed up; but he never heard of a *rejoinder* in evidence, and therefore denied that the defendants, after closing their case, could make any farther use of the
papers

papers in evidence. If they chose to read any parts of those documents, they ought to do it now. He thought his proposition favourable to the defendants, as it gave them an opportunity of observing on the whole of his case, which they could not do, if he was compelled to read in his reply the extracts he now proposed to make.

Mr. Bond, in reply, said, That he did not mean merely to delay the production of this new evidence, for the sooner it was brought forward, the more time he would have to answer it; but he meant to contend that it was totally inadmissible. He had produced returns for certain purposes: Mr. Douglas had also produced returns for other purposes. Was it competent for Mr. Douglas to look now to those returns for other purposes than he had stated? Could he insist in his reply on topics which had not been mentioned in his opening? He denied that the defendants case avoided that of the appellants; it was a complete joinder to the issue tendered by them, in which case no supplemental evidence ought to be adduced by the opponents. Those terms were borrowed from special pleading, in which however a rebutter and sur-rebutter were also known. But the Committee would not be caught by words; and as it was insisted that *he* was not to answer the case intended to be made by the reading of these

names, he trusted the Committee would not allow his adversary to produce evidence, which by his own confession, was to remain unanswered.

The Committee having deliberated, came to the following resolutions :

That the counsel for the appellants be permitted to read from the minutes of courts-leet (1734 to 1791) produced by the defendants, the names of various persons who appear on the homage and jury :

That the counsel for the appellants be now permitted to read the names of various persons who appear to have signed certain returns produced by them, which names have not been alluded to, or made use of, either by the appellants or the defendants, in the course of the proceedings hitherto :

That the counsel for the appellants be permitted to read from the court-book (1675 to 1723) produced by them, the names of various persons who appear on the homage and jury :

That the counsel for the appellants be permitted to read the names of various persons who appear upon certain rentals produced by them :

That before the counsel for the defendants proceeds to sum up, he be entitled to refer to any papers produced in evidence, by either side, in explanation of any circumstances referred to by the counsel for the appellants.

Mr. Douglas upon this read the names he proposed,

proposed to read; These I have referred to their proper places. See p. 275.

To prove the *fourth* head, besides the declarations which occasionally fell from the witnesses already examined, the counsel for the defendants called *Daniel Easton*, who was appointed head-borough in 1785, and went out of office in 1786. He said that the list by which he warned the suitors to the borough court-leet in 1786, contained the names of the master of every old borough-house, and all his lodgers, and none else. This list he afterwards delivered to Mr. Medwin, the steward; and it was produced before the Committee, together with the other lists. The list of 87 was of the same description, excepting that Mr. Marshal's name was introduced into it. But in the list of 1789 every inhabitant of the town was introduced. The steward called over the suitors by that list; and when it was objected by Mr. John Penfold, that he was deviating from the custom of the borough, he said he could not pay attention to such a custom, but should act as he thought right. In the following year the same objections were made to some persons who were sworn on the jury; and the same answer was given. In his cross-examination he acknowledged that he was a tenant of Sir John Honeywood; and that he and his father had always voted in the Honeywood interest. In 1786,
Miss

Miss Brown lived in Mr. Marshal's house ; so that he could not summon the tenant of it : and it was observed, that some of the persons in the list of 1786, inhabited what were reputed to be old borough-houses, but which the appellants contended to have been newly built.

On the *fifth* head it was agreed by the counsel on both sides, that an examined list of the returns for Bramber should be delivered to the clerk of the Committee. From the 13th Cha. II. the indentures of return were between the sheriff, of the one part, and the constable and others, inhabitants and burgers, or burgessees, of the other part. In 1702, between the sheriff and the constable, and the inhabitants of the borough. In 1703, between the sheriff and the constable, and many others, inhabitants and electors. In 1705, between the sheriff and the constable, and many others inhabitants, and a second between the sheriff and the constable, and many others, burgessees ; which was also the language of the last produced, viz. of the 29th Dec. 1707.

On the *sixth* and *last* head, the following questions arose :

The counsel for the appellants observing that there was an apparent contradiction in the evidence of Edward Hardes and that of William Kelsy, proposed to call Hardes again, and to confront

front him with Kelsy. To this the counsel for the defendants objected, because Hardes had been present during the proceedings of the Committee; but the Committee resolved, *That the witness Hardes may be called in, solely to confront the witness Kelsy as to their respective evidence; but that neither of them shall be further examined.* This, however, was not insisted on, but it was proposed to call Mr. Medwin and Philip Norris to the characters of Hardes and Wheeler. The Committee, however, resolved, *Not to admit the agents of either party to be called to the character of the witnesses of that party: And, That Philip Norris, having been frequently in the room during the hearing of this cause, be not examined.*

The counsel for the defendants called witnesses to the characters of Peckham and Johnson.

The evidence on both sides being closed, and

Mr. BOND,

on the part of the defendants, having declared, That he had no evidence to adduce that came within the resolutions, mentioned in page 344, he proceeded to submit his observations upon the whole evidence before the Committee; the bulk of which, he observed, had not been diminished, although the question had been considerably narrowed by the exclusion of the
hundred

hundred houses ; the spirit of which determination he thought extended to those in the manors of Charlton and King's Barns, as there was no evidence to prove that they were *within* the borough. He thought the question was accurately stated by an honourable member to be this : Whether the right of voting was a right attaching on the inhabitant of every house in Steyning, or only on the inhabitants of such houses as had been called ancient borough-houses by the witnesses ? The means resorted to by his clients for ascertaining the difference between these houses, were the history of the borough court-leet, and the tradition of ancient persons ; but the former was adduced merely to illustrate the subject, certainly not to prove that the right flowed from the borough-court, or was dependant upon it ; and therefore it could not be urged against that court that it had not perhaps so regular a constitution as most other courts-leet, although if pressed on that subject, he could refer to a case which proved that a leet might exist within a leet (a) ; and which also explained the law to be, " that every man ought to be within a leet ; and none could be of two leets." But whatever restrains and limits a jurisdiction at common law, leaves every thing to which it does not attach as it stood

(a) *Cook versus Stubbs.* 2 Croke, 583.

by the common law; he had therefore sufficiently described the limits of the jurisdiction of the borough court-leet, when he had proved that the only suitors to it were the inhabitants of the old borough-houses, for all others necessarily fell within the jurisdiction of the common law, and therefore were bound to attend the court-leet of the hundred. He had also proved, that the constable was chosen by the inhabitants of old borough-houses; and though some exceptions were proved to these positions, he requested the Committee to consider that these instances were drawn from the minutes of the court-leet, which were chiefly copied by the clerks of the present steward; and that the lists of those returned on the jury were wanting, which would have best ascertained the description of the suitors. This defect had, however, been supplied by the testimony of those who had filled borough-offices, and had done suit and service at the borough-court. His friends on the other side had brought forward some exceptions to the general rule; but the persons mentioned by them, he believed, would turn out to be the inhabitants of split tenements, which were ancient borough-houses, who were properly inmates or residents, and therefore ought in law to have been summoned to the borough court-leet. Those instances therefore,
instead

instead of contradicting, confirmed the position he had laid down. Though he did not mean to contend that the right was, strictly speaking, a burgage-right, it bore a strong analogy to that tenure : It was perhaps more in the true spirit of it than the right of voting in strict burgage-boroughs ; for it could hardly be supposed that in ancient times a person might return, after a long absence, and vote in right of land which he had not occupied ; but it is more probable that the right was, as in Steyning, partly of a real and partly of a personal nature. If it was so extended as to attach on every house within the borough, was it not singular that there was no perambulation to ascertain the limits of the borough, and that even the steward was totally ignorant of them ? The only criterion by which they had attempted to judge of what was or what was not within the borough, is the payment of a quit-rent to the Lord, which he thought could never be collected with accuracy from the miserable rentals delivered to the Committee, obliterated as they were, and rendered almost illegible by interlineations. He begged leave to say, that the wit which had been thrown out by the gentlemen on the other side, when they called his description of the borough a platform reffulated and spotted, must now return on themselves ; because the borough was certainly handed
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to them interspersed with hundred-houses, and was therefore open to their former observations. But every person must know that in this country several jurisdictions are frequently interwoven with one another, in such a way that one may pass through five or six of them in as many hours. The argument which they drew from the progressive number of voters, was, in his opinion, equally incorrect; for in the first poll produced, the number was not less than that which he contended for; and the rate of 1609, which contains only sixty-three names, cannot decide the point, as every one knows that at that period the poor were not so numerous as now, and therefore the fund for their relief was not required to be so large. Doomsday-Book shews that in the time of the Conqueror there were 118 *masuræ* in Steyning (*a*): a word which Spelman explains to mean, when applied to a borough, either the land to which a house belongs, or the house itself; in either way, the expression denotes that there were at that time 118 messuages in Steyning. The subsequent diminution of them established nothing, and the increase of the diminished number from a particular period, only proved that when the right of voting became more valuable, men

(*a*) See the passage at the end of the case.

sought out the ancient foundations, and built upon them. But if the argument of progressive numbers was conclusive, did that progression exist on their side? Had more and more houses been built on land not burgage-land? No: yet the Faggs, the Gorings, and others, had property in the borough, as well as the noble family who were then Catholics. The fact furnishes an internal evidence of the right, to which he thought no rational answer could be given. He now proceeded to consider the returns, especially those produced by the defendants, with a view of proving that their language was too inaccurate to be relied on; and on this subject quoted Serjeant Glanville and Luders, p. 15. The first was in the reign of Mary, and described the electors to be *burgesses* and *freeholders*: But there was not a particle of evidence that the freeholders vote. The other, in the reign of Elizabeth, is by the *burgesses* after their *usage* and *custom*: words which certainly would admit of his construction; but both were signed by Farnfold of *Gatewick*; a house which was clearly proved to be out of the borough. The evidence however he thought assumed a very different appearance, when he proved that thirty or forty persons of a particular description (with very few exceptions) and no others, had signed a vast number of returns. The joint returns for
Bramber

Bramber and Steyning proved that at one period the two boroughs sent members together ; but as this had been denied, he referred to the authorities of Prynn and Willis, who were disinterested in the cause, and who state the fact to have been so. The conclusion to be drawn from this union is not immaterial; for if the two boroughs were one, they probably had one returning-officer, and the rights of election were probably the same : they are so in Weymouth and Melcombe Regis ; the only instance where two boroughs are united. The returns for Steyning are also in the same terms with those for Bramber; which creates another presumption that the same terms were used to describe a similar right. As to the agreements made at the bar of the house, he observed that the only attention that could be paid to them was to consider them as evidence of the usage of the place ; but the commencement of this century was so late a period, that living evidence of the usage at that time could be procured. Gray (whose death he lamented) was eighty-seven when he died ; he speaks of the declarations of his father, who was born 123 years ago. Other persons speak of the declarations of persons who must have remembered the periods of contest. Yet these all give the right to the borough-houses, or, as they add, ancient borough-houses : words

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which must be allowed to explain the agreements of parties, or, if contradictory, to overturn them. He did not think that the Committee could listen to the idea of a plot, formed by upwards of 100 persons, not one of whom betrays it, in opposition to the testimony of credible witnesses who declare they never heard of such a conspiracy. Having discussed this subject, he proceeded to the poll of 1734, which he observed was found the very day before the last trial, as the rate of that year was discovered the day before the present one commenced. A singular felicity, that papers of importance should be found the moment before they were wanted. It was said, however, to contain some peculiar marks of authenticity, and was signed by the returning-officer, who perhaps conscious that it did not much resemble a poll, had affixed to it a sort of certificate which put him in mind of the painter, who was obliged to write under his productions, *This is a Lion: This is a Bear*. The first name on this poll to which any observation is applicable, is that of *Thomas Laundy*; but it turns out that Young, the authenticator of the poll, was landlord of the house, and in all probability made no difficulty of allowing his tenant to vote. Laundy's name also appears on the court-books the year before his house was built, which he would leave to the other side to explain.

John

John Box at that time lived in the *Chequer*, which is allowed to be a hundred-house; but in the subsequent rate of 1734, it appears he was rated for Jobbington's Castle. Indeed about this time it appears to have been much the practice for the voters to be rated for old borough-houses in which they did not live; and though the legality of this practice cannot be sustained, it shews the understanding of mankind in general, as they never went to be rated for houses newly built. It appears also in evidence, that persons were summoned to the borough-courts, not because they lived in old borough-houses, but because they were rated for them, the headborough being guided by the rate. Chatfield lived at the King's Arms, which is clearly a hundred-house; but he was rated for another within the borough; and Parker resided at Gatewick, which is out of the borough. Two votes are also most justly *queried*; that for Kemp's house, formerly Pike's, and John Dennet. As to the first, Thompson said that he lived in that house from 1747 to 1750; and that his vote was not solicited although the borough was canvassed: and as to the second, Kelfy expressly said, that Mr. Leaves built it on burgage-ground, in order to make a vote which he could not effect, and therefore sold the property. Having thus discussed the poll of 1734, and the cases of

newly erected or split tenements, he observed, that if after all, there remained a few instances of that description which the appellants had urged, they ought not to overturn the ancient usage of the borough. He would appeal to every member of the Committee, whether seven, eight, or nine votes improperly admitted, ought to have that effect in any borough in the kingdom? Do not instances of split burgages occur in every burgage-tenure borough? Improper votes often get on a poll; and if they do not affect the majority, are allowed to stand there by the favour of the returning-officer: the argument is only conclusive when the rejection of them would have gained the seat. On the other hand, one of his witnesses had declared that in 1754 and 1761, four or five were rejected; which counterbalances the instances of a few improperly admitted to vote. Mr. Bond now proceeded to comment on the traditionary evidence of usage, and exposed some contradictions in the evidence on that head for the appellants. He opposed the testimony of the sons of Brown and Penfold, the stewards, to the opposite account of their declarations given by Hope and Shaft. Their sons must be supposed to have been their most confidential friends; but they are found betraying their real sentiments of the right to every one, except those whom they
could

could trust. As to the conduct of the former gentleman, he observed, that the only imputation thrown on him was, that he acted as agent to the Faggs. But there was another party in the borough; the Faggs were opposed by the Gorings; and it is therefore difficult to suppose that Brown fabricated a plan to which both consented. Eleven witnesses (the Committee might reject two of them if they chose) had not only described the right to be as he had stated it, but had expressly negatived the right of a house built on new burgage-ground where there was no old foundation; whereas most of the witnesses on the other side do not speak to the actual declarations of ancient persons, but merely to their opinions. He had avoided hitherto saying any thing of the additional evidence, which Mr. Douglas had lately brought forward with an anxiety which betrayed his opinion that till then his case was not proved. That evidence could only be answered by facts, which it was impossible for the defendants to produce when their case was closed; and therefore he hoped that the Committee would, in their justice, discard evidence which he had not had an opportunity of contradicting. Notwithstanding the vast mass of matter before the Committee, and the rejection of his polls, the strong features of the case remained the same; and he might there-

fore say, without being guilty of impropriety, that if the case were doubtful, in an honest mind the decision of a former Committee in his favour ought to turn the scale.

Mr. DOUGLAS, in reply,

said, That the question was certainly difficult as well as important, in as much as it embraced a great variety of topics not necessarily connected with one another; but at the same time the two propositions respectively contended for were simple; and every man must understand the nature of the arguments and proofs by which they are to be supported. No positive law had been produced on the subject, and therefore the Committee were to decide which of the two statements was proved; or if neither of them was so, to define the real right of election: an observation which he made more for the sake of considering the subject accurately, than from any idea that a third right was established by the evidence. His statement had this advantage, that it concurred with the common law right of election; to which theirs was most repugnant. The history of the usage of the borough might be divided into three periods; the first of which commenced with the earliest tradition, and ended in 1712, when the last accounts of the right are to be found on the Journals: the second extends

xtends to and includes the year 1734 : and the third reaches from thence to the present time. Under the first he should consider the arguments drawn from the contests in 1701, 10, and 12, the returns for Bramber, the joint returns, and Doomsday : under the second the poll of 1734, compared with the subsequent rate of that year : and under the third the practice of the court-leet, the acts of the occupiers of newly built houses, and, above all, the parole evidence of reputation on both sides. It is singular that the words *ancient borough-house*, or *ancient foundations* never once occur in the evidence given to the Committees of Privilege, or in the agreements of the parties ; yet the numbers were frequently so nearly balanced, and the exertions of the parties were so great when five guineas were given for a jack in 1701, that the objection that a house was new must have been started, if an idea had been entertained of its validity. In 1701, however, Wolgar is said to live “ in part of a house,” not part of an *ancient* house, and Longmore hires “ a little house” (not a little *ancient* house) and gets upon the rate ; but in Bramber the case is very different. In 1703 “ the right of election was agreed to be in the persons inhabiting in *ancient houses*, or in houses built on *ancient foundations*, paying scot and lot.” The evidence also goes to ascertain whether or not the houses were of that descrip-

tion. Three voters are brought forward by the petitioners “who inhabited in *ancient* houses,” and it is objected to four others, “that they did not live in *ancient* houses (a).” In 1715 the agreement is the same, and the evidence turns on the same points: it is objected to Thomas Bawcomb, that he was an inhabitant of Steyning, “and voted for the new end of an *ancient* house, where a widow lives.” On the other side, a witness said, that he knew that the house where Bawcomb lives was within the borough of Bramber (which according to the defendants would have been sufficient); but he adds, *and a burgage-house*. Wheeler says, that Churcher’s house is a new built house *upon an old foundation* (b). The persons of the drama are the same here as in the contests for Steyning; he thought it therefore self-evident, if nothing appeared on the subject but the Journals of the House of Commons, that the difference of these expressions marked a difference of right in these two boroughs. It was the direct interest of the Faggs, the Gorings, and the Wallises to close the borough if possible, and to urge, as the present defendants had, the limited number of *masuræ* recorded in Doomsday; and the intent of producing so many returns was not, as had been imagined, to

(a) 14 Journ. p. 287. (b) 18 Journ. p. 155.

collect the right from the descriptions of it found in them, for he knew that they were in general too inaccurate to be relied on, but to shew that some one person of the families just mentioned, had always represented the borough. They had therefore by their conduct declared the borough to be open, and their declarations were in law those of Sir John Honynwood, who claimed under them. As to that record of high antiquity, Doomſday-book, he did not see that any conclusive argument could be drawn from it; and what little it furnished was unfavourable to the defendants; for it states that there was a carucate and a half of land in the borough, which, according to Spelman, is 150 acres, whereas all his clients meant to force within its boundary at most amounted to ten. The description was probably of a larger district, and comprehended Bramber; but whether Bramber and Steyning were two single boroughs like Banbury, and returned each one member, or whether they made but one borough, and returned two jointly, no accurate conclusion could be drawn from either supposition; for it happens in many places, as in Bristol and Okehampton, that there are two classes of voters, freeholders and burgesſes or free-men; and in Peterborough there are two districts which have different rights: the returning officer of Steyning and Bramber would therefore have

have laboured under no greater difficulty than is imposed on the returning officers of these places; and it was begging the question to say that the right of voting in Bramber must extend to Steyning, as it might just as well be argued that the right of Steyning must govern Bramber, since both were established by agreements. But if the borough at the time of the conquest was not necessarily confined to 118 houses, he was not forced to account for their diminution to 60 in 1609. It is fair to argue that their number was not greater, from the rate of that year; for by the 43d of Elizabeth, the rate must be laid upon all houses and lands, and if a smaller sum only be required, the deduction must be made proportionably from the possessions of each occupier. This argument was also strengthened by the presumption that all the voting houses in the borough would have been rated, as it is known that in the reign of James the First, a seat in parliament was an object of ambition: and Glanville's Reports shew that contested elections were then as frequent as now. If therefore he had proved that the right at the commencement of this century was as he had stated it, nothing since could alter it but an act of the legislature; and the only mode in which the gentlemen on the other side could avoid this conclusion in his favour, was by contending that the proof was
not

not so complete but that the subsequent usage of the borough might explain it differently. On this head he observed, that as the Journals had been the main object of his attention during the first period of the history of the borough, so the poll of the year 1734 (at which time Mr. Brown commenced his stewardship) might be denominated the center of the second. He must not forget to state that this was the only poll in evidence, except those of the late contests. But though this had been unquestionably proved by the decisions of the Committee, he should examine some of the observations made by Mr. Bond to attack its credibility. That learned gentleman had alluded to the recent date of its finding; but it was found where it ought to be, with the representatives of the returning officer. It is probable that it was taken with care, as the bribery act passed a very few years before (*a*), which imposed an oath on returning officers to return such persons as should to the best of their judgment appear to have a majority of legal votes. As to the jocular story of the painter, he observed that it had not any weight when applied to legal transactions; for a will begins by saying, "This is the last will and testament" of the person making it: the first words of an indenture are "This indenture:" an act of Parliament recites itself to be so. He

(*a*) 2 Geo. 2. Ch. 24.

should

should make it appear by this poll, that the inhabitants of several new houses and of split tenements had been allowed to vote; the Committee were therefore called upon to presume that the returning officer acted contrary to his duty and his oath, owing to some urgent interest: an idea which must be entirely dispelled, when it shall appear that several of those very persons voted against the party he had espoused. This was the case with respect to Philip Longford and the two Petos, whose votes are not queried, though given for the Marquis of Carnarvon, and therefore against Lord Vane, whose seat was in danger. On the other hand, Thomas Pike's vote is queried, though given for Young's party. Having thus cleared the poll of all obloquy, he proceeded to compare it with the rate of 1734, made nine months afterwards. From this it had been stated, (a) that in the town of Steyning 117 houses were rated; from these deduct five inhabited by women, and seven in the manor of Charlton, and there will remain 105. On the poll there are 105; but according to the defendants there are only 101 voting-houses: from these deduct five inhabited by women, and ninety-six will remain; which leaves nine votes upon the poll, which could not possibly have any right to stand there. He would ask any gentle-

(a) See page 269.

man acquainted with burgage-tenure, whether this diminution and increase of members could possibly have taken place, if from the commencement of the right there had been 101 voting-houses? They say a few votes for split houses might have crept upon the poll, by the negligence or favour of the returning officer; but would not these, as well as new built houses, have been narrowly watched in 1701, when there was only a majority of three? and is it not probable that all the old foundations would have been searched out? But a greater increase cannot be justly expected, because the property within the borough was possessed by great men, against whom the smaller proprietors would have in vain attempted to unite, and the little trade of the borough afforded no encouragement to erect new houses. Having discussed this subject, he proceeded to the new built houses and split tenements; on which head he observed that the identity of the houses, and the inhabitants of them, had been proved by a vast variety of parole and written evidence, which was scattered all through the minutes. It was said, that the use made of the latter had imposed a hardship on the defendants; but what hardship was there in recurring on a second trial to the public records of the kingdom? The returns were as open to the one side as to the other; and the observation was in a great degree applicable to
the

the minutes of the court-leet and the rentals, as they had had the inspection of them for a long time, and might, if they chose, have taken copies. It could be no objection to the latter that they were interlined and blotted; for if the alterations were made in order to correct errors, or to state a succession of facts, the papers were more authentic; and if done fraudulently, the blame was to be imputed to Mr. Penfold, from whose hands they were received. The deeds and parole testimony on this head, he thought, proved the point he contended for in a more satisfactory manner than could be expected, considering that most of those houses belonged to Sir John Honeywood; and the returns, and minutes of the court-leet, had also been consulted with success; for the former had exhibited in the body of them the names of many of the inhabitants of those houses, which it cannot be supposed the constable would have placed in that conspicuous situation, if he had thought they had no right to vote, and the latter proved that those persons, contrary to the assertion of the other side, had attended the borough court-leet. There was an absurdity in the argument drawn from the practice of that court, which nothing could do away; for, allowing it to have been proved (although there is no evidence of such an usage before the time of Brown) it is completely illegal;

legal; because by law every male resident of the age of twelve, excepting priests (even a servant) is bound to attend; and the steward may take a stranger passing through the town, for the purpose of forming a jury (*a*). Again, a nuisance is an offence indictable at that court; but if one existed in any of the streets or lanes which connected these detached houses, according to their argument, it would not have been within the jurisdiction of the court; but there are presentments of the roads being out of repair. Jurisdictions are undoubtedly often intersected; but an instance like this never before occurred, of 101 islands dropt into the sea of hundred; nor would the fact, if it were taken to exist, decide the right of voting, which was unconnected with it. Having gone through the two first periods of the history of the borough, he came to the evidence of reputation, as properly falling under the third. On this subject, he observed, that the right of election, set up by the defendants, was in reality contained in that which the appellants wished to establish, and it therefore became natural in a borough like this, where there were but few houses, and from the small increase of population, scarcely any newly built, and where of course the right must have been chiefly exercised

(*a*) 2 Instit.— Com. Dig. tit. *Leet*.

by the inhabitants of old houses, to suppose that in law the right was confined to those old houses. Accordingly Brown and Penfold are found giving illegal directions, that none should be summoned to the borough-court but persons of that description. This must be supposed to have been done with an interested view ; yet at times they are found betraying that their secret opinion (which must have been derived from the history of the place, and the facts within their knowledge) differed from their public declarations. Having commented on the testimony of the different witnesses, he said it would affect the declarations of most of those on the other side, that they insisted that they never heard of the right set up by the appellants ; for as he had proved in the first part of his speech, that that right was in truth recorded in the Journals, at the commencement of this century, it followed that they were either too uninformed to be relied on, or too corrupt to tell the truth. Most of them also are either tenants to Sir John Honeywood, or are at this time owners of old borough-houses, or have lately sold them ; in all which cases they are interested to secure the right which they imagine to belong to them. Upon the whole, he begged the Committee to consider how, on the one hand, his evidence had confirmed, if it wanted confirmation, the language of the Journals

nals of the House of Commons, had proved the gradual increase of numbers, and detected the schemes of Brown and Penfold: how, on the other hand, the presentments of new houses and the admission of their inhabitants to vote at elections against the interest of the returning-officers, had contradicted the pretended number of 101 voting-houses, and had forced the counsel for the defendants to abandon the practice of the court-leet: a ground on which they formerly so much relied.

On Wednesday the 4th of April, the Committee informed the House, by their Chairman, that they had required the counsel for the several parties to deliver to the clerk of the Committee, statements in writing of the right of election for which they respectively contended.

That in consequence thereof, the counsel for the petitioners (appellants) James Martin Lloyd, Esq. William Cooper, John Butcher, Thomas Sone, Siderick Elgar, Richard Jenner, Charles Groome, Thomas Newman, Richard Kemp, Edmund Streeter, William Sharpe, Thomas Young, and John Bachelor the younger, delivered in a statement as follows:

“ That the right of election of members to
“ serve in parliament for the borough of Steyn-

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“ ing,

“ ing, in the county of Suffex, is in the con-
“ stable and householders, inhabitants within
“ the said borough, paying scot and not receiv-
“ ing alms.”

That the counsel for the electors petitioners delivered in a statement as follows :

“ The counsel for the petitioners, Richard
“ Longhurst, William Town, Thomas Stam-
“ mer, Thomas Cox, John Morris, and Joseph
“ Curtis junior, to defend the right of election
“ for the borough of Steyning, in the county
“ of Suffex, as reported to the house by the
“ Select Committee, on the 7th day of March
“ 1791, state the right of election of members
“ to serve in parliament for the said borough to
“ be in the inhabitants of ancient houses, and
“ of houses built on the scites of ancient houses
“ within the said borough of Steyning, being
“ householders, paying scot and lot, and not
“ receiving alms.”

That the Committee had determined, That the right of election, as set forth in the said last mentioned statement, is not the right of election for the borough of Steyning, in the county of Suffex.

That no persons have a right to vote at an election of members to serve in parliament for the borough of Steyning, in respect of any houses within the borough of Bramber, the titling of
Bid-

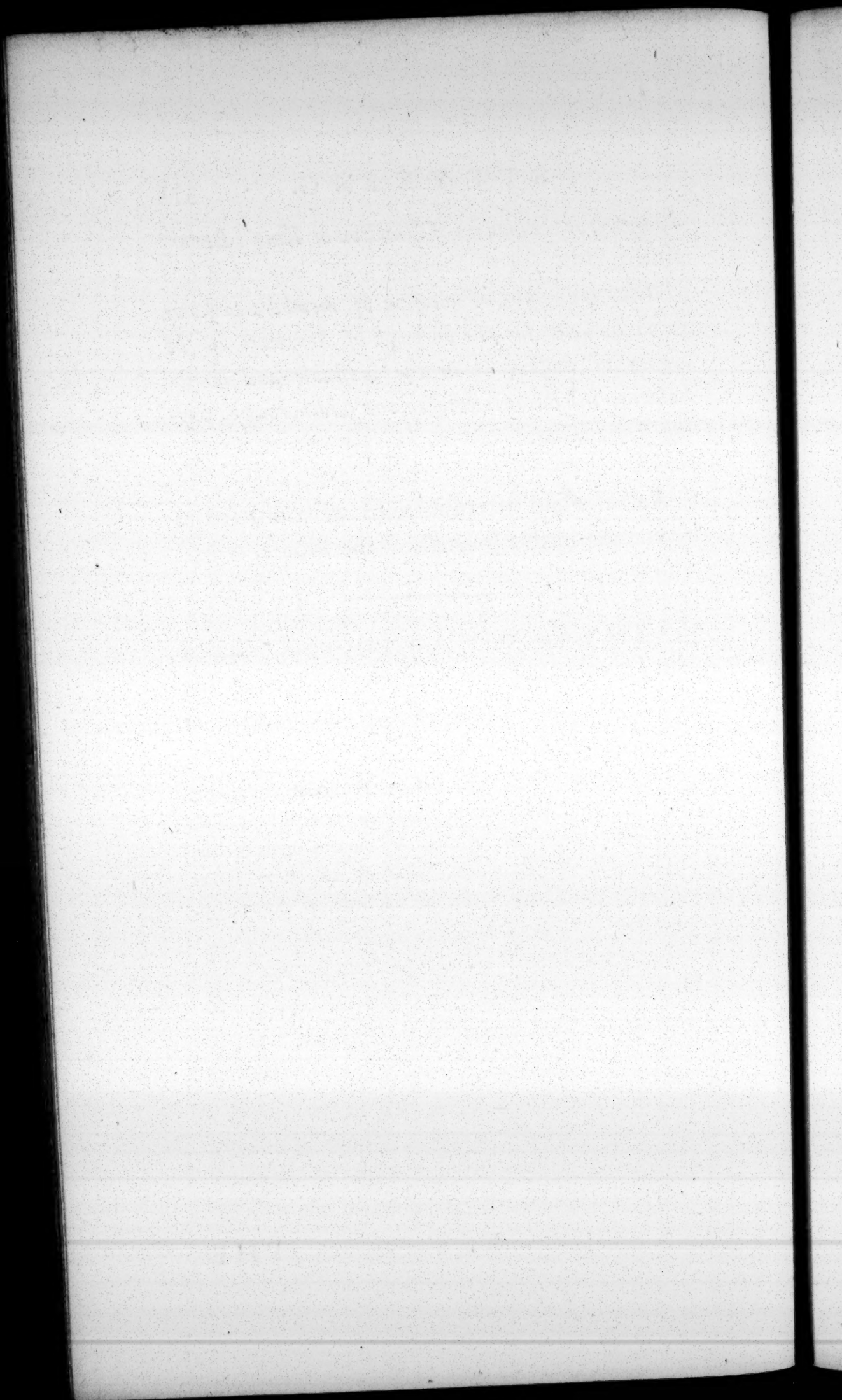
dlington, or the manors of Charlton or King's Barns:
And,

That the right of election of members to serve in parliament for the borough of Steyning, in the county of Suffex, is in the constable and householders, inhabitants within the said borough, paying scot and lot.

And the said determinations were ordered to be entered in the Journals of the House.

* * The passage from Doomsday-book, alluded to in this Case, is as follows: Under the title *Sudsex, Terra Æclæ' Fiscannens' in Gbestelinges Hd.*

In Burgo fuer' cxviii. masuræ. et reddeb. iiii. lib. et ii. Sol. modo sunt. cxxviii. masuræ. et reddt. c. solid. et c. den et hnt. i car. et dim. Ad curiam opabant. fic. Villani T. R. E. T. R. E. valeb' qt. xx. et. vi. lib. et post. L. lib. M; C. lib. et tam' est ad firma' p. cxxii. lib. xl. sol min.⁹



V.

THE

C A S E

Of the COUNTY of

R O X B U R G H.

B b 3

The

The Committee was appointed on the 26th day of March 1792, and consisted of the following Members :

Matthew Montague, Esq. *Chairman*,
Robert Williams, Esq.
Robert Peele, Esq.
John Dent, Esq.
John Pitt, Esq.
Thomas Williams, Esq.
Sir William Heathcote, Bart.
Hon. John Hope,
William Milles, Esq.
William Drake, Jun. Esq.
Hon. William Elliot,
Charles Callis Western, Esq.
Charles Rainsford, Esq.
Sir James Murray, Bart.
William MacDowall, Esq.

Petitioner,

John Rutherford, of Edgerston, Esq.

COUNSEL,

Mr. Partridge, Mr. Tait, Mr. Dundas.

Sitting Member,

Sir George Douglas, Bart.

COUNSEL,

Mr. Douglas, Mr. Luders.

THE
CASE

Of the County of

R O X B U R G H.

MR. Partridge opened the case on the part of the petitioner, stating, That the election for this county was held at Jedburgh, on the 24th of July 1790, when Sir Gilbert Elliott being præses, declared Sir George Douglas to be duly elected by a majority of thirty to twenty-five. Mr. Rutherford, the petitioner, insisted, that the greater number of legal votes was for him, the freeholders having refused to allow the votes of six gentlemen which had been given under protest in his favour. Four of these, viz. Colonel Pringle, Mr. Mark Pringle, Mr. Dallas, and Mr. Davidson, were struck off the roll by the freeholders, at the election-meeting; and the other two, viz. Mr. Sibbald and Mr. Dickson, having claimed to be inrolled, their claims were rejected by the freeholders. All

these gentlemen have since been put upon the roll by decrees of the court of session, upon several appeals from those acts of the court of freeholders.

Colonel Pringle's Vote.

Col. Pringle had been put upon the roll in the year 1781, and continued on it without any pretence of an alteration of the circumstances of his title. At the election-meeting, Mr. Elliott of Wells, a freeholder in the interest of Sir George Douglas, tendered to him the oath of trust and possession, as he was intitled to do by the stat. 7 G. II. ch. 16. Col. Pringle declared himself ready to take the oath ; upon which Mr. Elliott required him, previous to taking it, to answer certain interrogatories which he had prepared for the purpose of expiscating the true nature of his qualification. Colonel Pringle, conceiving that the freeholders had no right to call upon him to answer any interrogatories, refused to do so ; whereupon he was struck off the roll on the motion of Mr. Elliott. Having appealed to the court of session, he was replaced in his former situation on the roll, by the decree of that court, which was afterwards confirmed by the house of Lords^(a).

Mr. Partridge and Mr. Tait insisted, That by

(a) See ante page 216.

the stat. 16 G. II. c. 11. Col. Pringle was intitled to continue upon the roll, after having been upon it for four months, unless in case of refusal to take the oath of trust and possession, or an alteration of the circumstances of his title; and that, being on the roll, he was entitled to vote, if no personal disqualification attached on him, such as arises from attending nonjuring-meeting-houses, or being a revenue officer, &c. An alteration of circumstances was not pretended to exist in this case, and Colonel Pringle was ready to take the oath, had not Mr. Elliott, who tendered it to him, withdrawn his requisition, by insisting upon a previous answer to the interrogatories. But the conduct of the freeholders having been found by decree of the court of session, and afterwards by the House of Lords, to be illegal, and Colonel Pringle being thereby replaced upon the roll, the Committee ought to consider themselves bound by the determination of the supreme court upon the subject. Former Committees, in the cases of Airshire, Stirling, Elgin, Kircudbright, Orkney, &c. refused to investigate the title of persons who had continued on the roll unimpeached for four months; and therefore this Committee ought not to give such a decision as would shake that rule, and introduce uncertainty into this branch of the law.

Mr. Douglas, for the sitting member, argued,
That

That the freeholders were intitled to put such interrogatories as would discover the real nature of the voters title, and to strike off Col. Pringle, or at least to disallow his vote for having refused to answer them, A right to vote is acquired by having the superiority of a sufficient estate; but repeated acts of the legislature have declared, that if such estate is held in confidence, it can give no right. The mode pointed out by act of parliament for discovering this concealed defect of title, is to administer the trust-oath; but since the case of Sir John M'Pherson, it is settled that the freeholders may resort to other means of attaining the same end. In that case, interrogatories exactly similar to the present, were put and allowed. Indeed it would be absurd that any person should exercise a right founded on a title which he knows to be void, through a defect in the court of justice in the means of coming at the truth. In Scotland, the court of session always allows the parties to be examined as to any concealed facts; and in England, if an action is brought on a title apparently good, a court of equity interferes to discover any secret avoidance. But the title in question being void if held in confidence, and the vote bad, the freeholders had, and this committee has of course, the power to investigate that fact by every method lawful in other cases, unless restrained by a positive act of parliament.

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The court of Freeholders, in judging of the claim of Colonel Pringle, may be considered as acting in two capacities, though by the same decision: First, as judges of his right to be upon the roll; and, secondly, as judges of his right to vote. That these are distinct capacities appears from this, that the appeal from their determination is in the one case to the court of session, and in the other, to the committee of the House of Commons; and the court of session can no more judge of the goodness of the vote than this Committee can replace him on the roll. Whether, after four months continuance on the roll, a freeholder may be struck off for a defect in his original *title*, is a question upon which the court of session has so often changed its opinion, that the law cannot be said to be settled either way: for although the latest decision is against such a doctrine, and *that* in the case of this very vote, yet a month before, the law was supposed to be otherwise. But there is no law or statute which disables the court of freeholders from enquiring into the validity and nature of a *vote* before they admit it; for though they cannot strike a nominal and fictitious voter off the roll, yet they may refuse his *vote*, as well as those of revenue-officers, &c. who, though on the roll, cannot vote: And more especially a Committee of the House of Commons cannot
be

be supposed to be tied down by this prescriptive title after four months enrollment ; for as confidential votes are allowed to be void, and Committees are not restrained by any law either as to the manner or time, of their enquiry, they may have recourse to the ordinary forms of proceeding to investigate the nature of the vote. He then offered evidence to prove that the title upon which Colonel Pringle voted was confidential and collusive : That Mr. Pringle of Clifton, out of whose estate it was carved, was proprietor under a strict entail with irritant and resolute clauses ; so that any heir of entail might cause a forfeiture of the estate from both the grantor and grantee, unless Colonel Pringle prevented it by resigning his estate. This, and the estate's being only for life, explained the nature of the transaction to have been, that Colonel Pringle should hold under confidence to denude upon request. But then his situation is exactly the same as if he had given a back-bond, which is an express disqualification, and mentioned as such in the oath of trust and possession.

Mr. Tait objected to the admission of such evidence. It never was doubted in Scotland till lately, that four months continuance on the roll gave a conclusive title : the contrary doctrine held for a short time by the court of session, against the opinion of the whole bar, has since been abandoned ; and the law is now placed on

its

its solid foundation by the decision in the case of this very voter. It has always been held by Committees, that the right to vote was not in consequence of the estate possessed, but of being or having a right to be upon the roll; therefore the two rights are co-extensive and convertible, except where the exercise of the right to vote is prevented by any personal disqualification: and of this opinion was the Committee; for,

The Court being cleared, and a motion being made, and the question put, "That the
" counsel for the sitting member be admitted to
" produce evidence as to the title-deeds of Col.
" Pringle, notwithstanding his having been
" upwards of four months upon the roll,"—*It passed in the negative.*

The Committee then determined, "*That Col. Pringle ought to have been admitted to vote at the last election for the county of Roxburgh.*"

The counsel for the petitioner then proceeded to add to the roll the votes of Mr. *Mark Pringle*, Mr. *Davison*, and Mr. *Dallas*, who were in the same situation as the former voter, except that the appeals against the several decrees by which they were replaced upon the roll were not determined, the appellants seeming to have waived them since the determination of the other cause. Mr. *Dallas* indeed had answered all the interrogatories put to him in a most satisfactory manner; yet his name was
struck

struck off the roll, which Mr. Partridge insisted, shewed how little scrupulous the friends of the sitting member were in the use they made of their majority, in deciding questions in his favour. Mr. Douglas admitted that these were not to be distinguished from the former case. The Committee accordingly decided, that these voters ought to have been admitted to vote at the election. The counsel for the petitioner then proceeded to the votes of Mr. *Sibbald* and Mr. *Dickson*, who, claiming to be inrolled, had been rejected by the freeholders, but since placed on the roll by decree of the court of session. Mr. Douglas admitted, that since that decree he could not dispute their titles. These six being added to the votes in favor of Mr. Rutherford, left him with a majority of thirty-one to thirty; and Mr. Partridge contended that he was duly elected.

Mr. Douglas then claimed to add to the poll of the sitting member,

The Vote of Mr. Anstruther Paterson.

This gentleman was in the interest of Sir George Douglas, and having voted for him under protest, his vote, if good, made the numbers equal, and the casting-vote of the præses given for Sir Geo. Douglas, carried the election in his favour. Mr. Paterson's title to vote was confirmed by many years continuance on the roll. At the election-meeting, Mr. Rutherford

ford required him to take the trust-oath. He said he was ready to do so; but Mr. Elliott of Wells prevented him, by requiring him previously to answer interrogatories similar to those he had put to Col. Pringle. The voter refused to do so, and referred to the reasons given by Col. Pringle. Mr. Elliott then moved, that he should be struck off the roll; which was accordingly done. The voter afterwards voted under protest for Sir George Douglas; and upon Mr. Rutherford's again requiring him to take the oath before being admitted to vote under protest, Sir Gilbert Elliott, the præses, refused to administer it to him, as being no longer an elector. Mr. Anstruther Paterson having appealed to the court of session, and made Mr. Elliott of Wells Defendant in that suit, Mr. Rutherford applied to the court and was admitted a co-defendant, on the suggestion of collusion between the parties, and pleaded, that Mr. Paterson having, by collusion with Mr. Elliott of Wells and the præses, evaded the taking of the oath, that evasion should be considered as a refusal; and that he was therefore lawfully struck off the roll. In the proof in that cause Mr. Rutherford took the depositions of those whom he suspected of being privy to the collusion, but who all denied it in very strong terms. Mr. Douglas read parts of their depositions to disprove any such transaction. The Dean of Faculty, who was counsel for Sir
Geogre

George Douglas at the election, deposed, that he found Mr. Paterfon ready to take the oath, and called him out of the room to dissuade him from doing so, because he was always of opinion that a person in his situation ought not in conscience to take the oath; and he had so high a personal regard for Mr. Paterfon, that he could not allow him to take such a step without seriously advising him against it; but that Mr. Paterfon resolved at last to take it. Sir Gilbert Elliott, the præses, denied collusion, and said that Mr. Paterfon was always ready to take the oath; but that, from the prejudice against these voters, he was unwilling any of his friends should incur the reproach of having taken it: that he therefore wished Mr. Elliott of Wells to propose the interrogatories in order to prevent the voter from taking the oath, and that Mr. Paterfon was seriously displeased at his friends for striking him off the roll. Many other witnesses concurred in the same testimony. Upon this case the counsel for Sir George Douglas insisted, that he was intitled to the benefit of the vote; and that whatever blame might be imputed to the præses, or the other friends of the sitting member, Mr. Paterfon was not to suffer by the injustice they had done him: that he was a party to the cause before the Committee, being interested in having that candidate returned for whom he voted: That as to him at least, the transaction was
exactly

exactly similar to that in the case of Colonel Pringle ; he was equally ready to take the oath, and therefore no act of the freeholders or præses, such as refusing to administer the oath or striking him off the roll, whatever might be their motive, could deprive him of the benefit of his vote. It was admitted that he did not *refuse* to take the oath ; and it was proved that he was not privy to the plot by which it was evaded. By the statute, he is to take the oath upon its being put to him ; but here it never was put. Again, the statute empowers and requires the præses to administer the oath ; but where the præses refuses to perform his duty, it is impossible for the voter to take an oath which is not administered to him.

Mr. *Partridge*, in answer, read other parts of the proof in the cause whilst before the court of session, to question Mr. Paterfon's readiness to have taken oath. Mr. Warrender swore, that from the general tenor of the transaction, it was the conviction of almost every person present, that the interrogatories were put for the purpose of enabling the voter to escape taking the oath. Mr. Dickson swore he was sitting next Mr. Paterfon during the election, and in conversation asked him if he would take the oath : that he at first said he would ; but afterwards said he did not know whether he would or not. Mr.

Anderson deposed, that the day before the election he met the voter going to it, which made him ask why he took the trouble of going ? for that all such freeholders were to be struck off the roll ; to which he replied, That they might strike him off the roll, but at least he would have a vote for the præses and clerk. Mr. Partridge contended that these suspicious circumstances fully justified Mr. Rutherford in appealing into that test which the legislature has furnished for the detection of fictitious votes : That he had called for this test, and had never waived his demand, but, on the contrary, voted against putting the interrogatories to Mr. Paterfon, and afterwards insisted on his taking the oath when he voted under protest. This materially varied his case from the case of Colonel Pringle ; for there the same person who had required the oath, retracted and waived his requisition : but no one man can waive another's request, nor can the whole freeholders defeat the effect of one voter's demanding the oath. All Mr. Rutherford's friends voted to continue Mr. Paterfon on the roll, while those of his own party unanimously voted to expunge his name. This, better than all the depositions, proves the real nature of the trick, and the understanding of all parties, that it was for the advantage of Mr. Rutherford that he should be put to his oath ;
and

and that the other side knew it to be necessary that he should evade this test. Mr. Paterson having voted for the expulsion of those in the same situation with himself, before his own expulsion, and under protest afterwards, cannot complain of that justice which he was dealing out to others. If he did not actually collude with the præses, he cannot be supposed very averse to the manœuvre, at least so far as it prevented him from taking an oath which his friends thought so very exceptionable, and so dangerous in its consequences. There are three descriptions of persons whose votes may be good : 1st, Those allowed to continue on the roll. 2d. Those unlawfully struck off. 3d. Those whose claims to be enrolled are improperly rejected. All these are *freeholders*, and therefore within the words of the 7th G. II. c. 16. It certainly was the intention of the legislature that all these descriptions of persons should, equally as the first, be subject to the test of the trust-oath; for, besides the reason of the thing, the act expressly says, “ every *freeholder* who shall *claim* to vote “ shall, before he proceeds to vote,” &c. cautiously avoiding to mention, as a necessary circumstance to require the taking of the oath, that the claim shall be allowed. If it were otherwise, whenever a fictitious voter claimed to be en-

rolled, his friends would gain the benefit of his vote by rejecting him upon improper grounds, and the oath could not be put to him till he appeared again. The same thing would take place in regard to those who are struck off the roll upon improper grounds, with a view to save them from actually refusing to take the oath. These persons may thus have their votes allowed at an election, and be afterwards replaced on the roll, in order to act the same part a second time.

Mr. Tait, on the same side with Mr. Partridge, offered evidence to prove that Mr. Paterfon's vote and title were of that nature, that he could not with a safe conscience take the trust-oath.

To this Mr. Douglas objected, saying, that the evidence was similar to that rejected by the Committee in the case of Colonel Pringle.

Mr. Tait replied, That this evidence was offered *diverso intuitu*, not to call in question his title, but to shew the improbability of his having ever intended to take such an oath: however, there being a difference of opinion in the Committee, the learned Counsel did not think this evidence so material as to insist upon it; but proceeded to prove the point from the opinions of all Mr. Paterfon's friends; and, among others, the testimony of the Duke of Roxburgh, who said he believed that Mr. Paterfon was
struck

struck off by his friends, because “ they wished
“ to avoid his being in a situation where there
“ was a possibility of any thing disagreeable
“ happening from the violence of party.”

Mr. *Douglas*, *in reply*, urged, That as the having a right to be upon the roll, and the having a right to vote had been found in Colonel Pringle’s case to be co-extensive rights, so the being struck off the roll and not being allowed to vote, were co-extensive penalties ; and as the Court of Session had found that Mr. Paterfon did not incur the one, the Committee were bound to relieve him from the other. He then offered several circumstances to take off the force of the evidence given by Dickson and Anderson, considering the words which they swore were used by the voter, to be the vague answers of a man by no means acute, to men not intitled to be informed on the subject of their enquiries. He argued that the idea of a prosecution for perjury was absurd ; for all that the voter would have sworn to, was his internal conviction on the subject ; which men may doubt, but never can judicially investigate. Yet it may well be doubted, whether the præses did wrong in refusing to tender the oath ; for if he had administered the oath, he would have flown in the face of the decision of the court in which he presided, by con-

sidering and treating as a freeholder a person to whom they had refused that title. In Sir John M'Pherson's case, Lord Thurlow expressly said, That a freeholder must be on the roll before the oath can be put to him. If therefore the inconveniences pointed out do result from this doctrine, that may be a very proper consideration for the Members of the Committee, when sitting in a legislative capacity ; but cannot influence their judgment when they sit as a court of justice to administer the existing laws.

The Committee having deliberated, determined *that Philip Anstruther Paterson ought to have been admitted to vote at the last election for the county of Roxburgh (a).*

On Friday the 30th of March, the Chairman informed the House, That the Committee had determined that Sir George Douglas, Baronet, was duly elected :

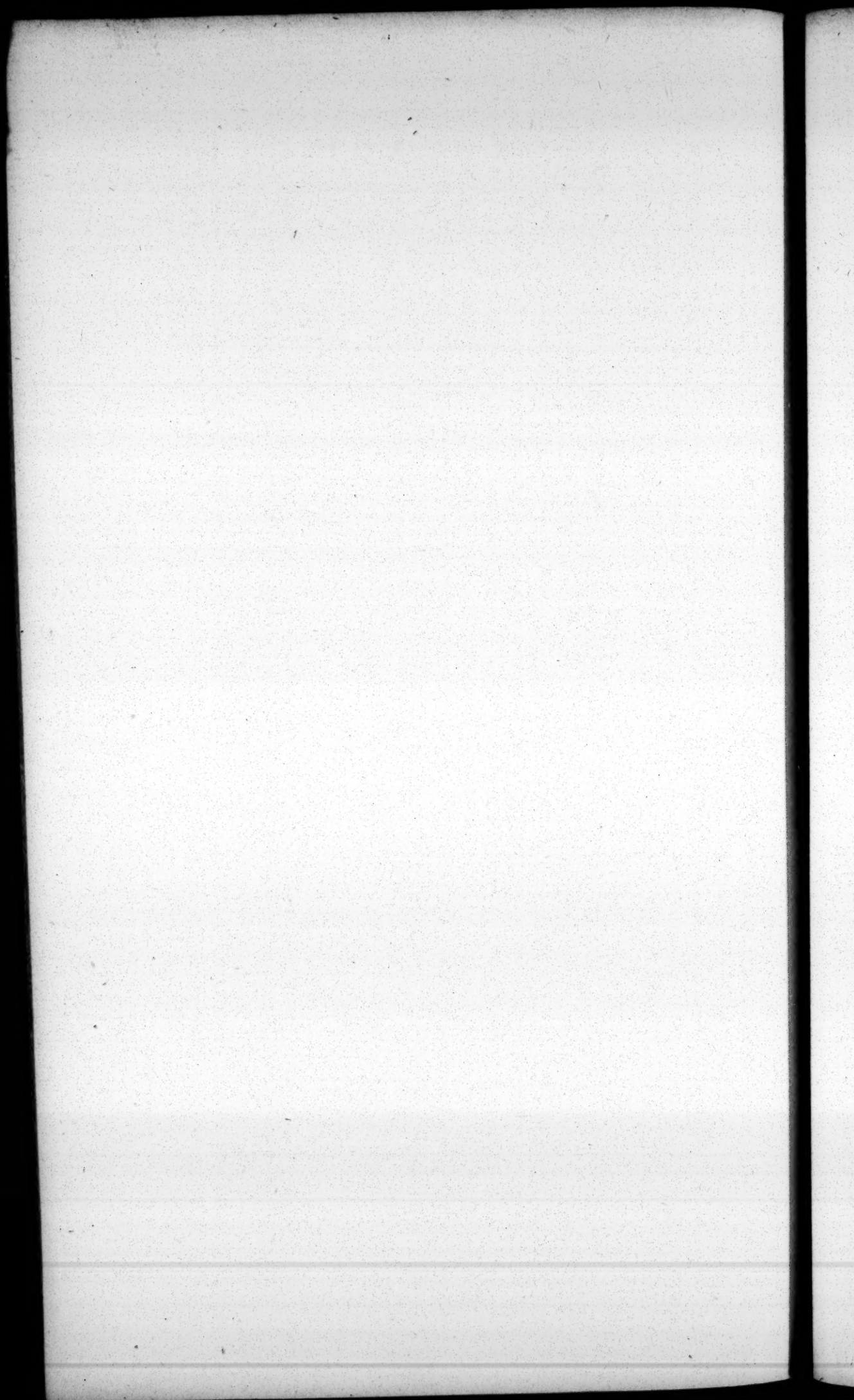
That the petition of John Rutherford, Esq. did not appear to be frivolous or vexatious ;
And,

(a) The Committee passed a considerable time in deliberation ; and it was understood that their decision in favour of Mr. Paterson's vote, was carried by the casting voice of the chairman.

Tha

That the opposition of the said Sir George Douglas to the said petition, did not appear to be frivolous or vexatious :

And the said determinations were ordered to be entered in the Journals of the House.



VI.

THE
SECOND CASE

Of the Borough of

S T E Y N I N G,

In the County of SUSSEX,

On the several Petitions

Complaining of an Undue Election and Return

For the said Borough.

The Committee was appointed on Friday the 20th of April, and consisted of the following Members :

Mathew Montague, Esq. *Chairman,*

William Dowdeswell, Esq.

John Balfour, Esq.

John Pitt, Esq.

Hon. Geo. Cranfield Berkeley,

Sir Fred. Leman Rogers, Bart.

Paul le Mesurier,

George Sumner, Esq.

Admiral Leveeson,

Penn Ashton Curzon, Esq.

Francis Gregor, Esq.

Richard Bampste Johnstone, Esq.

Charles Anderson Pelham, Esq.

Sir Gilbert Elliott, Bart. *Nominee of the
Petitioners,*

Gibbs Crawford, Esq. *Nominee of the
Sitting Members.*

Petitioners,

1. Samuel Whitbread, Esq.

2. Certain Electors in his interest.

COUNSEL,

Mr. Partridge, Mr. Nath. Bond.

Sitting Member,

James Martin Lloyd, Esq.

COUNSEL,

Mr. Douglas, Mr. Milles.

COUNSEL FOR THE RETURNING OFFICER,
Mr. Garrow.

THE
SECOND CASE

Of the Borough of

S T E Y N I N G.

THE petition of Mr. Whitbread (which, of the two petitions presented to the House, was the most comprehensive) set forth, That at the late election of a member to serve in parliament for the borough of Steyning, in the county of Suffex, held on the 24th day of March, 1791, the petitioner and James Martin Lloyd, Esquire, were candidates; and that at such election the petitioner had a majority of legal votes upon the poll, and ought to have been returned; but that James Hope, the constable and returning officer for the said borough, being well acquainted with the rights and customs of the said borough, grossly misbehaved himself in deviating therefrom, as well in the manner of taking the poll at the said election, as in the admission of persons upon the poll: That the said James Hope, being also acquainted with the late determinations of a select committee appointed

pointed to try and determine the merits of the petition of Sir John Honywood, Baronet, and John Curtis, Esquire, complaining of an undue election and return for the borough of Steyning aforesaid, which determinations were made the 7th day of the said month of March last, whereby it was determined (among other things) that the right of election of members to serve in parliament for the said borough, was in the inhabitants of ancient houses, and of houses built on the scites of ancient houses within the said borough, being householders paying scot and lot, and not receiving alms, did, notwithstanding such his knowledge as aforesaid, as the constable and returning officer for the said borough, grossly misbehave himself in deviating therefrom, and in shewing extreme partiality and improper conduct in favour of the said James Martin Lloyd, by admitting on the poll for the said James Martin Lloyd, the votes of several persons who had no right to vote, and who had, to the knowledge of the said James Hope, been determined by such Select Committee as aforesaid, not to have a right to vote, and rejecting good votes offered for the petitioner : That thereby, and by other improper conduct, a majority of votes was unduly received on the poll for the said James Martin Lloyd, and he was by the said James Hope returned as duly elected, to the prejudice
of

of the petitioner, who ought to have been returned, and in violation of the rights and privileges of the electors of the said borough of Steyning.

The petitions being read, and followed by the determinations of the Committee of Appeal, which were reported to the House,

Mr. PARTRIDGE

Stated the history of the borough, and the proceedings before the last Committee; and observed that the present Committee, after deciding the right to the seat, would have to consider also, Whether the conduct of the returning-officer had not been such as to merit punishment from their hands? He observed, that however fortunate that officer might have been in anticipating that the resolution of the Committee in 1791 would be partly rescinded by the Committee of Appeal, in other respects he was mistaken; namely, when he admitted the inhabitants of houses in the districts of Biddlington and King's Barns not ancient houses, to vote. For when the former Committee decided that the right was confined to ancient houses, they of course excluded these; and their determination was so far confirmed by the subsequent Committee. He thought his adversaries might esteem themselves fortunate, that though on the first trial a decision

decision was obtained against them by a large majority, they had on a second hearing, succeeded by a majority of only —— Mr. Partridge was here interrupted by Mr. Douglas, who observed, that what could not possibly be proved ought not to be stated; upon which the Committee said, he need not trouble himself on that subject, as they entertained no doubt upon it (a). The learned Counsel then stated the numbers on the poll, and the classes of voters he meant to attack, and concluded with observing, that probably much of the time of the Committee would not be required, as the negative resolutions of the last Committee had excluded a vast number of the votes given for the sitting member; and if he should be required to define the borough still more accurately, he had many witnesses to prove the perambulations of the borough-jury, who regularly sat out from a particular house in the middle of the borough, went to Edward Young's house at the corner of Dog-Lane, and returned on the other side of the High street. As they constantly went from one old house to another, he meant to contend that nothing but the houses which they visited, and their gardens, were within the borough.

(a) It was understood that the decision of the Committee of Appeal was carried by a majority of one.

EVIDENCE.

EVIDENCE.

The poll taken on the 24th of March 1791, being delivered in, the numbers appeared to be for James Martin Lloyd, Esq. 94 ; for Samuel Whitbread, Esq. 72. Majority for the former gentleman 22. William Porden being sworn, produced a plan of the town of Steyning.

The Counsel for the petitioner objected to 12 of the votes given for the sitting member ; the houses in respect of which they were given being situate in the tithing of Biddlington.

All these were situated to the south of the Stream rising in Singwell-street, and to the south of Dog Lane, and were ultimately admitted and decided to be bad. (*b*)

Thomas Ledbetter, who had been headborough of the tithing of Biddlington, *Stephen Rickwood*, Mr *Charles Brown*, and other witnesses said, that the stream and the lane were the boundaries between the tithing of Biddlington and the borough of Steyning, and also between the tithing of Biddlington and that part of Bramber which is in the town of Steyning. Mr. Brown said, he should think the houses on the right hand of Dog-Lane, going up to Brewers Pond, in the

(*b*) The first Twelve mentioned at the end of the Case.

borough of Steyning, and those on the left, if there were any, in the tithing of Biddlington. The evidence of Grey and Peckham, who died since their examinations before the former Committee, was also read in this part of the Case.

Joseph Lee he said had often been on the jury when they perambulated the borough : they went from the White Horse in the High Street to Edward Young's, and without crossing the Singwell-stream, or going up Dog-Lane, returned on their steps, visited the farthest borough-house in Sheepen-street, then went by the backs of the gardens belonging to the houses on the west side of the High-street and turned down Pound Style into the High-street, viewing a foot-road to see that it was not presentable, proceeded on the left to a house near Britton's Well (Hubbard's) crossed the road to the George, went up to the Quaker's Meeting-House, and to two borough-houses beyond it, turned back to Church Street and Chantry Green, and from thence returned to the White Horse. The purpose of the jury going this round was, to see that the pitching of the town and the road was in proper repair. This witness being pressed in his cross-examination, to say whether this circuit was the boundary of the borough, or whether it was merely the line the jury took in going from one old borough-house to another, said, it was the boundary

dary of the borough; but he thought nothing borough or burgeses-ground (as he called it) *but what was under the houses*; and had heard that there were 101 of these pieces of borough-ground which constituted the borough. But he acknowledged that there was no borough-house along the foot-path into which the jury turned from Sheeppen-street.

Joseph Lee confirmed the last witness, as to Dog-lane being the boundary between the old borough-houses and the tithing of Bidlington; and he added, that in his opinion nothing was within the borough of Steyning but “the ground covered by ancient houses.” He had however been appointed leather-sealer for the borough, and had executed his office at Bannister’s, which is without the limits of the borough, and in the tithing of Bidlington.

The houses of these twelve voters, amongst which were the *Tan-Yard* and *Jarvis’s*, were also proved to be in the hundred of Steyning by the entries of minutes of the courts-leet of the hundred, and lists of the persons warned to those courts produced by Mr. Medwin, steward of that court.

Edward-Read said, That the Singwell-stream runs under Peckham’s house; and that Stringer’s and Belchamber’s are next the water, on the Bidlington side. In his cross-examination, being

D d

asked

asked whether he knew of any gardens, or court-yards, or lanes in the borough? he answered, No; even the High-street itself was not in the borough, nor the hustings erected there for taking the poll. He confined the borough to the ancient houses.

Mr. *Medwin* being called for the petitioners, said, That these twelve houses pay no quit-rent to the manor of Steyning: he apprehended that some of them, although locally situated in the town of Steyning, were in the tithing of Biddlington, because the occupiers of them, as he collected from the proceedings of the court-leet for the hundred of Steyning, had served the offices of constable and headborough for that tithing. He did not know the limits of the borough and manor of Steyning, which he thought co-extensive; but he had, as steward, received quit-rents for many houses, not reputed borough-houses; and there are houses of that description which pay no quit-rent. In forming this judgment, he was guided by the ancient rentals. He had never received rent for any houses to the south of Dog-lane, except it were for a piece of ground near Brewers-pond, the situation of which he did not precisely recollect. There is a manor of Biddlington, of which he is steward; but none of the twelve houses in question pay any quit-rent to that manor.

Daniel

Daniel Easton gave a similar account of the usage of the borough court-leet to that given before the former Committee; after which, "Mr. Bond stated, That the counsel for the petitioners had finished that part of the evidence which relates to the tithing of Biddlington, and submitted to the Committee, whether the cause should not be separated into classes, and that he should now be heard to observe upon this part of the case." To this proposition,

Mr. *Douglas* objected, saying, That he thought it was the right of every defendant to have the whole of the accusers case disclosed to him before he could be called upon to make any part of his defence. His client was also in possession of the seat, and therefore it was incumbent on the petitioner to make out a *prima facie* title to it; but if all the twelve votes were decided to be bad, there would still be a majority against him on the poll. In the Okehampton case, a similar arrangement to that now proposed was adopted; but the copies of the minutes state it to have been done with the consent of the parties; and if Committees have sometimes insisted on its adoption, the question has always been of a general nature, and has admitted of, and required a separate and distinct discussion. But deciding that one house is without the borough, does not decide the situa-

tion of another. Every house forms a separate case; and therefore if they are not considered at once, there will be as many answers and replies as there are classes of houses; which will create both inconvenience and loss of time. He also thought that the Committee would wish to form some idea of the whole boundary of the borough before they decided that of the tithing of Biddlington; and had accordingly given this opinion to his clients.

Mr. Bond, in answer to the objection, said, That if he had hoped to gain no other advantage than an opportunity of addressing the Committee three times instead of once: he certainly should not have troubled them with this proposition; but, in his opinion, the negative resolutions of the last Committee constituted three different causes, each of which would require evidence, which would be solely applicable to itself. He observed, that every question of boundary must be extremely difficult; because, in general, the mind is perplexed by different views of the same object; but, whenever it is possible to separate those views, and thereby to narrow the question, the labour is abridged by a mode which conduces to the justice of the determination. If his friend meant that the right of the defendant to hear the whole of his adversaries case was so insurmountable, as implicitly to bind the Committee in a cause of such a nature as the
present

present one, he begged leave to contradict the assertion; for the Dorchester Committee came to a resolution in great measure similar to that which he now proposed, against the opinion and the wish of one of the parties. The last argument urged against his proposal he thought the best; and if the Committee had reason to conclude that he wished to close his case in such a way as to surprise his adversaries, they undoubtedly would do right in denying his request: but they would recollect, that the matter was mentioned five days ago; and that the other side had no reason to suppose that the whole case would last so long as this branch of it had lasted. The present question did not relate to the general boundaries of the borough, but to its boundary on the side of Bidlington; which could not be elucidated by any other topics of consideration. He asked, whether, in discussing this matter, any one observation had been introduced which relates to any other subject? To suppose therefore that the evidence on another subject could illustrate this, required a confusion of intellect, which he did not apprehend any one in court to possess. In particular, the question of occasionality was of a most distinct nature: But if the Committee should be of opinion, that all the questions of boundary were connected, still he requested them to separate

those votes which depended on that discussion from the rest of the case, as such an arrangement would save time, and conduce to the general justice of the cause.

Mr. *Douglas*, in reply, said, That the last words of his learned friend had explained, in better language than he could use, the objection he had to make to his proposition ; for it followed from them, that the Committee would never wish to save time, where the sacrifice of it was necessary to attain the ends of justice. He observed, that Mr. Bond had departed from his original proposal, which was to decide separately on the Bidlington votes, and had ultimately proposed the discussion of the general boundary : but for this the Committee were not yet prepared, though when the proposition was regularly made, he should perhaps object to it. Liable as he was to the imputation of a confusion of ideas, he certainly could not perceive that twelve houses being in Bidlington was a simple proposition, any more than the pleas of twelve minors, each of whose cases must rest on its own circumstances and proofs. No mathematical line can be applied to the boundary of the borough, or the tithing : Such boundaries undulate, their lines are capricious, and it might just as well be proposed to take as a class the first twelve voters on the poll. Though the right of the defendant to hear the whole of the plaintiff's

plaintiff's case had been denied, he insisted that it was possible, that after all the petitioners case should be proved, the sitting member might escape being called upon for his defence : he was therefore now desired to defend the Biddlington votes, although it might be unnecessary to enter on that question. It might also be part of his case to impeach votes given for the petitioners as situate in that very district, which might vary the boundary ; but it could hardly be maintained that he was thus compellable to disclose the defence of the sitting member before the proper time. On this point he quoted the authority of the House of Lords, that highest tribunal, from which there was no appeal, in the trial of Mr. Hastings. He also dwelt upon the maxim *melior est causa possidentis*, a ground on which many nonfuits are ruled ; and observed as to the notice said to have been given him, that it was not incumbent on his friends to regulate their conduct by the opening speech of an adverse counsel ; as he should not only have then declared what his intention was, but should have called on the Committee to sanction the propriety of it.

The court being cleared, and a motion made,
 “ That the counsel for the petitioners do proceed to observe upon the evidence produced, relating to the tithing of Bidlington, previous to

entering upon any other part of the case,"—*It passed in the negative.* Whereupon,

Mr. Partridge delivered in a list of nineteen votes, which he objected to as being given for houses within the manor of Charlton; ten of these were ultimately admitted to be bad (*a*). On this head Mr. Marshall, steward of the manor of Charlton, being called, said, That there are houses in the town of Steyning, held of that manor, intermixed with the others. He produced some minutes of the proceedings of courts baron, and a book intituled, "Manor of Charlton (*b*).'" Mr. Martwick and Mrs. Eversfield are Lord and Lady of that manor. He did not know the

(*a*) The last ten mentioned at the end of the case.

(*b*) When these papers were produced, Mr. Douglas said, That Marshall, as steward of this manor, acted in a distinct capacity from that of agent to the sitting member, and that he had on that account consulted him how far he was justifiable and compellable by law to produce the manor-books in the present cause. He had looked into the authorities on the subject, and the reasons on which they are founded, and thought he could maintain that as steward, Marshall was not bound to produce those books, except in a cause where the Lord of the manor was a party. But as they had been produced before, and the production of them could not injure Mr. Martwick and Mrs. Eversfield, and might conduce to the fair investigation of the present question, which his client wished to take place, he had advised Marshall to follow the same course he had done before,

boundaries

boundaries of the manor, but it is very extensive, as some tenants, situate seven or eight miles off, do suit and service. There are many parts of the manor that are not contiguous to one another. He collected much of his information from the game-keeper of the manor. Being desired to point out what in his apprehension was the boundary between the manor of Charlton and the borough of Steyning, he said, he thought the line beginning at Shippen-street, crossed the Chequer orchard, where there was the appearance of a ditch, and passed along the road and foot-path at the back of the High-street, to the Pound-stile, and thence along a foot-path which goes to the West mill, leaving Britton's croft on the right. This foot-path terminates near the corner of Britton's croft in Mill-lane, through which the boundary runs to the mill, and from thence along a road to Mouse or Mill-lane, whence it passes through a lane to the Horsham road. Proceeding south from Shippen-street, he said he believed that all the common fields immediately at the back of the houses and gardens in Singwell-street, and for a considerable distance beyond it, excepting perhaps a very few spots of ground, were in the manor of Charlton. There were however houses and lands to the east of this boundary which are held of the manor. The game-keeper is Reeve of the manor, and collects the rents.

From

From the court-book a presentment was read of the year 1705, that the *Chequer Inn* was holden of this manor, "by the yearly rent of 7d. heriot relief, and other services." Presentment 1744, before William Holmes, steward, that John Box held of this manor the *Chequer Inn*, in Steyning, and also certain lands in Steyning, called the *Rublee* (in the *Chequer-lains*) by the yearly rent of 1s. 7d: Presentment before the same steward in 1750, that Stephen Rickwood held the same lands at the same rent, &c. Rickwood alienated to Sturdwick, who was succeeded by Scot. These facts were also presented. Rickwood said that his house was in the manor of Charlton, and that the hundred court-leet was frequently held there. There are borough-houses on each side of the *Chequer*. It consists of a house, stables, back-yard, and one acre of land.—Jenner voted for this at the last election. Reid (a servant at the inn) also voted for a building in the *Chequer-yard*; asserted on the one side and denied on the other, to be a distinct tenement.

With regard to *Soane's*, formerly the *King's Arms*, presentments were likewise read, stating it to be held of the manor, by fealty, suit of court, heriot, relief, and the rent of 8s. In 1789, Edward Young who held the premises, alienated to Thomas Soane the messuage, together with a part of the land adjoining, whereupon the rent
was

was apportioned, three shillings to Young, and five shillings to Soane. The old King's Arms was pulled down. Soane built a new house for himself; and four other houses (occupied by James Glazebrook, Robert Sharpe, John Brooks, and Henry Groome) were built on that part of the King's Arms which was bounded by Brewers-lane. These five votes were admitted to be bad.

Edward Charret's vote was objected to on two grounds: that he was not a householder, and that his tenement, which was at the end of the Flax Barn, formerly Parson's, was holden of the manor of Charlton. On the last head were read presentments in 1759, 1762, and 1779, that Thomas Parson, Elizabeth Parson, William Bennet, and Edward Young, successively held of that manor certain premises with a flax-barn, shop, and fellmonger's yard, by the rent of 8d. &c. but Mr. Marshall said he thought Charret's house was not apart of these premises, and that the shop mentioned in the presentment was at the other end of the flax-barn. Much evidence was given relative to this small tenement which had a chimney in it; but the vote was ultimately given up by Mr. Douglas, not on the ground that the house was without the borough, but that the vote was affected by occasionality.

George Welling's vote was objected to, because part of the George Inn, which he occupied,
was

was in the manor of Charlton : Presentments in 1762 and 1769 were read to this effect ; and, on the other hand, rentals charging the tenant of the George, late Marchant's, with the rent of 1s. 2d. to the Lord of the borough and manor of Steyning. Mr. Marshal said, That the house had the appearance of being built at different times ; and he thought the principal door divided the different parts of the house, and that the part adjoining to the High-street, and to Cuckney's house, was in Charlton. The vote was not decided upon.

Thomas Andrew, John Stringer, John Bachelor junior, Thomas Hudson, Thomas Kinnard, and Marchant Taylor, were objected to, because the houses in which they live (which adjoin one another, and are almost opposite the work-house) were built a few years ago on the ground of John Streeter, holden of the manor of Charlton. A presentment to this effect of the 7th December 1772 was read. The homage do not mention the rent of Streeter's land ; but state that they are desirous that the premises may be enquired after, in order that they may be further presented at the next court. Mr. Marshal said, That no further presentment appeared on the court-book. Since he was appointed steward, he had requested the homage to enquire if this property was within the manor ; and they had refused to present

sent it as being so. The votes were admitted to be bad.

The counsel for the petitioners proceeding to object to the votes of *Robert Lamport* and *Edward Sharpe* because their houses were situate within the manor of King's Barns, it was admitted by the counsel for the sitting member, "That these voters voted for and lived in houses locally situate within the town of Steyning (viz. in Church-street and Singwell); which houses appear on the books of the manor of King's Barns to be held of that manor." These votes were afterwards admitted, and decided to be bad.

The counsel for the petitioners then objected to sixteen persons, "who voted in respect of houses not within the borough of Steyning." Eight of these lived in Mill-lane, viz. *Thomas Tobitt*, *William Sharpe*, *Thomas Andrew*, *John Bachelor junior*, *John Stringer*, *Thomas Kinnard*, *Marchant Taylor*, and *Thomas Hudson*; two in the Back-lane, viz. *William Woolgar senior* and junior; two in the High-street, viz. *John Bachelor senior*, and *William Parsons junior*; three in Shippen-street, viz. *Charles Groome*, *William Parsons*, and *Richard Penfold*; and one in Church-street, viz. *Edward Green (a)*. To

(a) The reader will observe, that some of these votes were before objected to on other grounds.

impeach

impeach the three in Shippen-street, Stephen Rickwood said, That the houses were built on the Chequer-orchard; and that the whole of that field was reputed to be in the hundred of Steyning. He had occupied the Chequer, but did not recollect that any ditch or path ran across the orchard, or that there was the appearance of one: but John Wilson, who also kept the inn, acknowledged that there was an inequality of ground which bore some resemblance to a ditch. William Kelfy said, That in Rickwood's time there was no appearance of a ditch in the orchard; but that Burnett and Smith, who occupied it after him, dug a ditch across it from north to south. In this he was confirmed by Joseph Lee. He never heard the field reputed to be in the borough of Steyning, but always in the manor of Charlton. Being asked, whether he had any reason for saying that the whole of Turner's Croft, otherwise the Chequer-orchard, was in the manor of Charlton, other than that he conceived all the ground up to the borough-houses to be in that manor? He answered ultimately, that he had not; but that these who frequented the fair, which is kept not on the Chequer-orchard, but the Chequer-lains, paid shewpence to the manor of Charlton. Those who shew at the borough-fair, held in the High-street, pay their pence to the steward of the borough.

borough. But he would not allow that the High-street was within the borough.

With respect to *Edward Green's* house, opposite the church, in Church-street, Lee said it had no connection with the borough: he had heard that 100 houses only had connection with it. Rickwood and Easton said it was reputed to be in the manor of King's Barns, while occupied by Harriden, Green's predecessor. This was the substance of the parole evidence given on this class of voters, but the counsel for the petitioner produced several extracts from assize-rolls and other records, found since the last Committee sat, as illustrative of the history and bounds of the borough.

In the earliest of these, viz. the assize-roll of 7 Edw. I. (a) the abbot of Fiscamp claims before John de Keygate and his associates, justices itinerants in the county of Suffex, to have certain privileges in all his lands, and to have a free market twice a week *in burgo suo de Stayning*, by grant from Henry III. The jury present on their oath, certain privileges in *Villis de Brode et Staning*, &c. And being sworn upon

(a) The assize-rolls were the records of the judicial proceedings before the justices in Eyre itinerants, who were appointed to go the circuits at first once in seven years.

new articles, to wit, *de feudis*, present, “ That William de Breuse holds the barony of Brembre *in capite* of the Lord the King; and that the abbot of Fiscamp holds the *manor of Stening* of the Lord the King; and the bishop of Cycester the manor of Hemefend *in capite* of the Lord the King.”

The parliament-roll of the 4 Ed. IV. was next referred to; by which it appears that the King in parliament, reciting letters patent in the first year of his reign, gave, granted, and confirmed, to the abbess and convent of Syon, in the county of Middlesex, all their immense possessions, and, amongst others, “ Nec non *maneria de Stenynges* “ Brede et Wormynghurst, cum suis pertin’ in “ Com’ Sufflex, quondam parcell’ possessionum “ abbie de Fyscampo alienigen’; ac omnia “ terras tenementa et possessiones quecumque, “ cum suis pertin’ in dictis Com’ Glouc’ et “ Sufflex’, et in civitate London ac alibi infra “ regnum nostrum Angliæ, quæ quondam per- “ tinuerunt eidem abbie de Fyscampo.”

The minister’s account in the 32 Hen. VIII. soon after the dissolution of monasteries, mentions the lands and possessions of the late monastery of Syon, amongst which is the *dominium sive manerium de Steynynges*, with many others. But of these a particular account is not given, because they are said to have been annexed to the
honor

honour of Petworth, by an act of parliament of the preceding year, and what is due to the King it is said will appear by the account of the auditor of that honour. But the minister's account of the following year enumerates the possessions of the honour of Petworth, and gives an account of the rents of the borough of Steyning (*a*). Mr. Topham said the borough was regularly accounted for in the minister's accounts, from the 33 Henry VIII. to the 4 Eliz. In this year, it is said not to be accounted for, because granted by the crown to Robert Harris and Robert Watson (*b*). The particular for the grant to these persons (in trust for the Duke of Norfolk) was also produced (*c*), and the grant itself, part of which will be found in the Appendix to the case (*d*).

The evidence on this class of voters being closed, the counsel for the petitioners stated, "That they had gone through the whole of their evidence as to the several classes of voters already delivered in, and proposed that this part of the case should be summed up and proceeded upon, previous to entering into any other part of the cause;" to which the counsel for the sitting member answered, "That they had no

(*a*) See the Appendix to the case A.

(*b*) Appendix B.

(*c*) Appendix C.

(*d*) Appendix D.

objection to this mode of proceeding." Upon this,

Mr. BOND,

said, That Mr. Whitbread, his client, complained of votes being received against him by the returning-officer, contrary to the right of election, as it was understood in the borough before the decision of the appellate committee; and also that consistently with that determination he was entitled to the seat. The Committee would observe, that the resolutions which had been read to them embraced two propositions; the first of which did not attempt to define what constituted the borough, though it declared affirmatively, that all inhabitants householders *within it*, ought to vote; whereas the second was more explicit, and lopped off certain excrescences, which it declared not to belong to the borough, whatever it might be. It had been proved that the county of Sussex was divided into districts, the parts of which are so dispersed, and so intermingled with one another, that they leave the face of the country spotted, in a manner scarcely observable elsewhere; and this the second Committee were so sensible of, that they came to the negative propositions, as being too clear to admit by a doubt, even before they decided the right of the borough itself. It is not immaterial

terial that these districts and divisions are recognized by the common law ; to which and to history we must refer for their origin and construction. From the earliest times the kingdom was divided into counties, hundreds, and tithings ; and each of these had its peculiar courts, whose jurisdictions were commensurate with the districts in which they existed. Other divisions had other courts, which exercised jurisdiction within their limits ; thus a court-baron was incident to a manor, and existed the moment the manor did ; and a court-leet though not incident to a manor, might be created by grant from the crown. He therefore thought that where a perambulation of a district could not be proved, the best way of ascertaining its boundary, was to ascertain the limits of the jurisdiction of the court which governed it. It was the policy of the law that justice should be brought home to each man's door ; and therefore a court was allotted to every district, as a fountain from whence that justice was to be derived. That court for the borough of Steyning was the borough court-leet. Mr. Bond here recapitulated the evidence which went to prove that Dog-lane and the Singwell-stream divided the borough on the south from Bramber, and the tithing of Biddlington ; and in an answer to the observation that might arise from the declaration of his witnesses, that the

borough consisted solely of old houses, and that therefore the late juries did not perambulate the bounds of the borough, but merely went from house to house; he said it must be supposed that their search after old houses was confined to certain limits, which it was proved they never transgressed, because there were many old houses beyond these limits to which they might have gone, if their search had not been restricted to those within the borough. Of this position King's Barns manor-house furnished an example. Not content with drawing a general line of division in a borough where property is so intermixed, he had also proved that the twelve houses on that side were holden of the manor of King's Barns, or that the inhabitants of them were summoned to the hundred court-leet as inhabitants of Biddlington, and had served offices for that tithing. On the other hand, they were never summoned to the borough-court, nor do they pay quit-rent to the manor of Steyning; and though it had been said that the leather-sealer of the borough executed his office at Bannister's, that usage probably took its rise from convenience, as there was no other leather-sealer in the hundred. Dismissing this class of voters, he proceeded to those in the manor of Charlton, the evidence respecting which was equally conclusive against them, although it did not establish
so

to definitive a line of boundary. After enumerating the presentments and evidence which related to these, and to the two-houses which had been proved to hold of the manor of King's Barns, he proceeded to consider that class of voters whom he maintained to be not within the borough, although they did not fall under any of the former descriptions. On this head some very extraordinary evidence had been found since the rising of the last Committee, of which his clients had not been able to avail themselves before, because they were told by the officer of the repository in which it was kept, that it did not exist there. In the assize-rolls, the Borough, Town, and Manor, are separately mentioned. It was a singular presumption therefore to suppose that the manor and borough are co-extensive, which was a proposition that he always had denied, and always would. The steward's opinion that they are co-extensive can have little weight, when at the same time he acknowledges that he does not know the limits of either. From the augmentation-office the Committee have also received a particular account of the borough, preserved in the records of the augmentation-court, which was instituted to account to the crown for the possessions of the dissolved monasteries. The borough of Steyning was at that time annexed to the honour of Petworth; and

the minister's account states the borough to contain only five or six pieces of land, and two ways, and to yield upwards of ninety rents for the bur-
gage possessions. One person is however said to hold *divers burgages*; all which taken together tallied so exactly with the traditionary evidence of the right of election, as in his opinion to furnish a demonstration of the truth of it. But his learned friends on the other side seemed to exult, when they read in a subsequent grant of the borough from the crown, the words *boscus, prata*, and other similar expressions. On this subject, he would only request the members of the Committee to look into the title-deeds of their own estates, and to see if they could possibly find objects to satisfy all the words of their conveyances; these words were probably added as a drag-net, to comprehend not what actually existed in this borough, but what might exist in any borough. The evidence in his opinion was so strong, that it must bear down that loose evidence given to the former Committee should it be again brought forward. But, though *they* were prevented from defining accurately the borough, would it be proper that the present Committee should leave it in an equally unsettled state? On the contrary, he thought that, as good judges, they should consider the consequences of their decision, and endeavour, if possible, to prevent future litigation. They would recollect that the
word

word *burgage* meant either a house or land; which would enable them at all events to put a proper construction on these important documents.

Mr. Bond now summed up more particularly the evidence relating to the several voters whose houses held of the different manors, and laid it down as a general position, that if they owed and had actually performed suit and service at the hundred-court, they could not owe suit and service to the court of the borough, and were therefore not within the borough. He concluded with expressing the strongest hope, not only that his client would be entitled to the seat, but also that the Committee would be enabled by the evidence to draw such a line of boundary on the north of Steyning as to do substantial justice between the parties.

Mr. Bond having finished, Mr. Douglas observed, That *he* ought to have an opportunity of remarking on the evidence which might criminate the returning officer, as well as Mr. Garrow, who was his counsel; as otherwise a returning-officer, by having counsel, would be placed in a worse situation than if he had none; as in that case the two counsel for the party whom he had favoured, would of course undertake his defence. He therefore submitted to the other side, that they ought to bring forward the charge against

Hope, before he should be called upon to open his case. To this Mr. Partridge answered, That he was not at that time prepared to enter on the charge, but that if the Committee would adjourn till next day, to give him an opportunity of consulting his client, he might be enabled to suggest a plan which possibly might save the returning-officer the expence he was at present put to. The Committee accordingly adjourned till the following morning, when Mr. Partridge informed them, that although he was of opinion that he could successfully criminate the returning-officer upon a fair construction of the election-laws, yet his client considering all the circumstances of the case, had acceded to his advice, and was willing to drop the charge in the present state of the cause. Upon this,

Mr. DOUGLAS

said, That although the Committee had lost a little time by adjourning, he hoped that upon the whole they had saved much time, as a more accurate investigation of circumstances which till disclosed by the case of the petitioner he had no opportunity of ascertaining, had convinced him that it was impossible to maintain the election of the sitting member. The grounds on which he abandoned the defence of the seat were these : The majority in favour of his client was twenty-two ;

two; but objections had been made to forty of his votes, in twenty-three of which he acknowledged that the petitioner had succeeded; so that he necessarily had a majority of one. He had thought early in the cause that it would have been necessary for the Committee to call on the parties to state the manner in which they construed the different parts of the resolution of the Committee of Appeal. His statement would have declared the right of election to belong to the inhabitants householders paying scot and lot within the borough of Steyning, and would have concluded by negating the right of those in the tithing of Biddlington, and the two manors of Charlton and King's Barns. The word *manor* he referred to *tenure* merely, considering the houses and land held of the different manors to be *within* them (a). But though the

(a) Mr. Douglas in the course of the cause had contended that the counsel for the petitioner ought to confine themselves to one of the two modes of proving houses to be *within* these manors; *i. e.* either that they paid quit-rent to the manors, or that they were locally situate within a given boundary. But Mr. Bond would not assent to this restriction. The Chairman of the Committee then intimated, that statements of this difference might be called for; but the opinion of the nominee of the sitting member seemed to be generally adopted, that statements were unnecessary, as the parties agreed in excluding all that was within the manors, and merely differed as to the mode of proving what was or was not within them.

kingdom,

kingdom, as Mr. Bond had stated, was divided into well-known districts, these are not marked out with such geometrical accuracy that a tithing was always the 10th part of a hundred, but are found to assume all the diversities incident to surface ; their boundaries therefore can never be ascertained but by very decisive evidence of perambulation, or the repeated acknowledgements of persons living in certain situations that they were within a particular district, and were amenable to its jurisdiction. In both these respects his friends on the other side had succeeded; for by means of the Singwell-stream and Dog Lane, they had fixed a boundary on the south end of the borough, which he despaired of surmounting, and which deprived him of twelve votes. They had likewise proved, that Lamports, as well as *King's Barns* manor-house (also excluded by the stream) held of that manor; and that the King's Arms, which afforded five votes; the Chequer, which gave two; and Young's and Sharpe's held of the manor of *Charlton*. The last of the twenty-three votes he had abandoned with regret, not because he thought the tenement out of the borough, but because the voter was not a householder; this was the vote given for the shop at the end of the Flax Barn. Having gone through these, he begged leave to say a few words on the last class of voters, who had been
objected

objected to by his friends on the other side, *as not being within the borough*, although they had not been able to prove that these persons lived in any of the districts which the last Committee had excluded. One argument by which they supported this position, was drawn from the suit which these persons did to the hundred-court, another from the parole account which had been given of the borough, and a third from the ancient instruments which had been spoken of as almost miraculously sent down to illustrate the cause. His opinion however of the latter documents was, that had they been found before the decision of the last Committee, they would not have injured his case; for though *they* had not been quoted, Doomsday had been consulted, to shew, that in the time of the Conqueror the borough consisted merely of houses; a position which he had so completely refuted from that very authority, that it was not brought forward on the present occasion. This he might venture to assert would also have been the fate of the more modern records. Doomsday says, there were in the borough 123 *masuræ*, which he had no objection to translate *houses*, or *cottages*; but it likewise says, that there was a carrucate and a half, or 150 acres of land, which joined with the subsequent description of the borough,

 enumerating

enumerating (he had almost said) its *Pascua Rura Duces* (a) furnished an irresistible argument that the borough was more comprehensive. The rule in such solemn conveyances is to let every word have its full import; it is as absurd therefore to suppose that a conveyancer would introduce such words into the description of a borough which consisted merely of old unconnected houses, as to imagine that he would enumerate the mines, fishings, trees, and forests of a messuage he was about to convey. As to the description of the borough given by the witnesses, the testimony of Mr. Marshall, which would have been confirmed by others, might be fairly opposed to the tradition of the 101 voting-houses which appeared to be so connected with the usage of the hundred-court. On this subject he had to observe, that the Duke of Norfolk, and in his Grace's absence his steward, was judge of the hundred as well as of the borough court-leet, both of which are held in the town of Steyning. The Committee, by turning to the minutes of the last Committee, would perceive that Brown and Penfold, the two late stewards, were in the interest of the family of the Faggs, and had contrived a scheme to summon

(a) See the grant from Eliz. to the Duke of Norfolk, Appendix D.

no other persons to the borough-court but the inhabitants householders of certain old houses, disregarding the rule of law which says, that every inhabitant whatever within the jurisdiction of the court is to be summoned. This being the case, it became necessary for the inhabitants of the other houses to do suit and service somewhere, which the stewards arranged by summoning them to the hundred-courts. An usage originating in this illegal measure deserved but little attention. He insisted that nothing could be within the hundred of Steyning that is not within one of its subdivisions; it followed therefore, that every thing in the town of Steyning that is not within the tithing of Biddlington, the manors of Charlton and King's Barns, or the borough of Bramber, must belong to the borough of Steyning: a construction which he was convinced would be for the good of both sides, and alone could prevent the violent disputes which must otherwise take place. Mr. Douglas having finished,

Mr. *Partridge* said, That as his adversaries had given up their cause, it became unnecessary for him to discuss at greater length the interpretation which he had given to the resolution of the last Committee. He begged leave, however, not to be understood to assent to the conclusions which Mr. Douglas had drawn from the
evidence

evidence now produced. As to what had been said of that produced before a former Committee, it was in his opinion irrelevant to the present cause, as he trusted the Committee would confine themselves to the evidence before them.

The Committee afterwards determined those votes to be bad which Mr. Douglas had abandoned; and on Monday, the 7th of May, reported to the House by their Chairman,

That James Martin Lloyd, Esq. was not duly elected:

That Samuel Whitbread, Esq. the petitioner, ought to have been returned; and was duly elected: And,

That neither the petitions nor the opposition to them were frivolous and vexatious.

And the said determinations were ordered to be entered in the Journals of the House.

Names

Names of the Voters whose Votes were decided to be bad by the Committee, with their Numbers on the Poll.

John Belchamber, 86.	Robert Lamport, 154.
George Burchell, 117.	Richard Jenner, 132.
John Butcher senior, 156.	George Read, 93.
George Ireland, 76.	Thomas Sone, 134.
Thomas Pink, 85.	James Glazebrook, 84.
Stephen Reeves, 153.	Robert Sharp, 135.
John Stringer, 7.	John Brooks, 44.
William Slaughter, 110.	Henry Grome. 34.
John Stiveld senior, 160.	Thomas Young, 140.
John Tippen, 108.	William Sharp, 142.
William Welling, 115.	Edward Charrett, 78.
Edward Sharp, 141.	

A P P E N D I X

TO THE

SECOND CASE

Of the Borough of

S T E Y N I N G.

[A.] P. 417.

The Minister's Account of the Borough of
Steyning, in the 33 Hen. VIII.

HONO' DE PETTWORTH CUM } Comp' omniu'
MEMBR' IN COM. SUSSEX. } & singlor' Ball'
Coll' Bedell' Prepos' firmar' Meslor' & alior' Ministror'
Dni. Regs. ibm. tm. de veteri hereditate qm. de Dominiis
Man. Terr' & Tents. per predict' Dom' Regem nuper
quis' & eidem Honori auctoritate Parliamenti jamdudu'
unit' & annex' computabil. existenc. a Festo Sci. Michis.
Archi. Anno Regni ipsius metuendissimi Dni. ni. Henrici
vij' Dei Gra. Anglie & Franc. Regs. Fidei Defens. Dni.
Hibn. & in Ten' supremi Capit. Anglicane Eclie xxxijd.
usq. idm. Fm. Sci Michis Archi extunc presequens anno
Regni ejusd' Dni. Regs. tricesimo tercio. scilicet per unu' Annu'
integu. ut inferius.

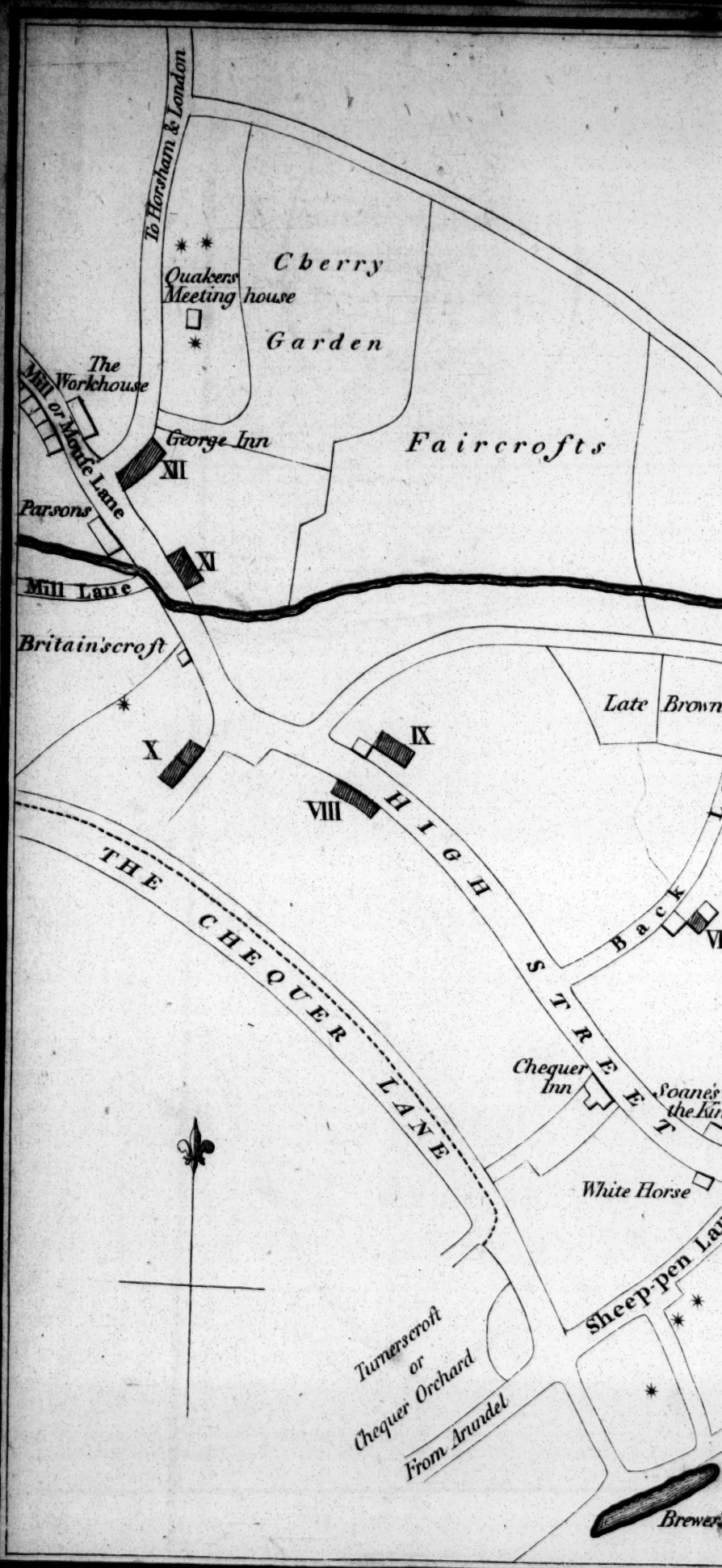
Videlit:

BURG. DE } Compus' Robti. Dunstalle Prepos'
STEYNYNG. } Burg. ibm. per dict' Tempus.

ARREGIA. Null. q' primus Compu's istius Computs.
ad Usum Dni. Regs. fact.

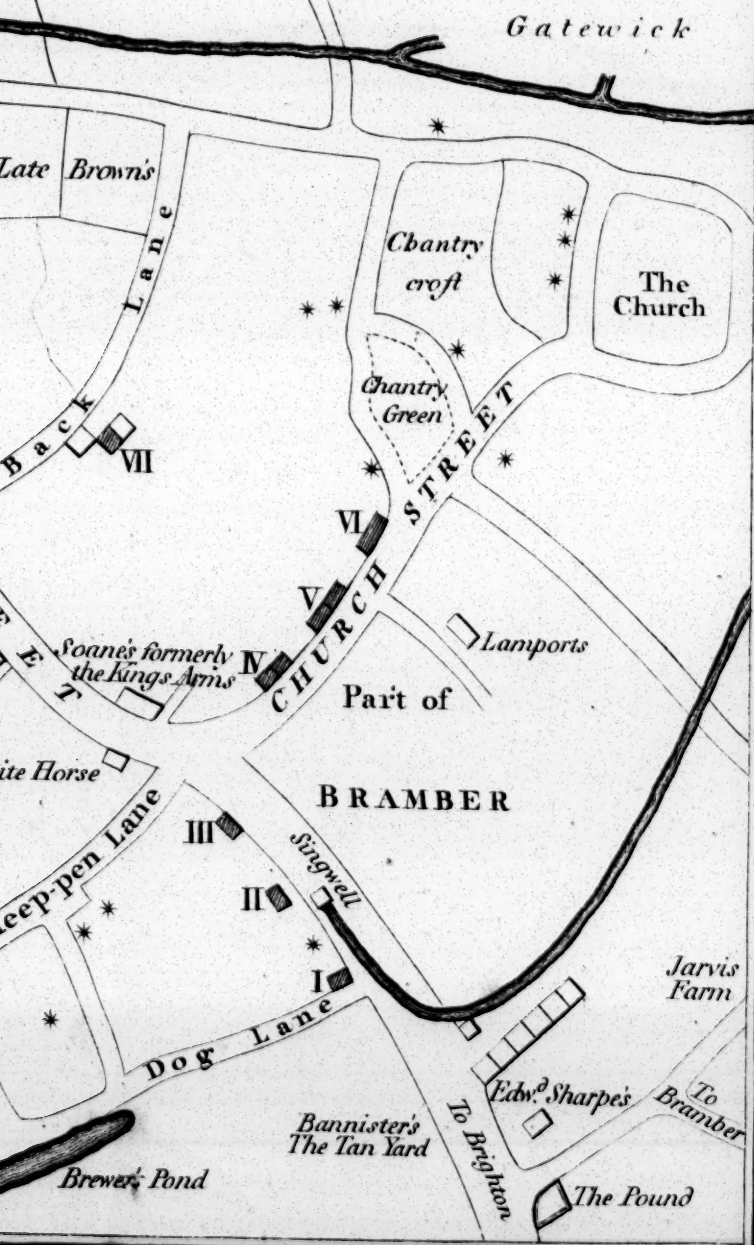
Sm. Null'.

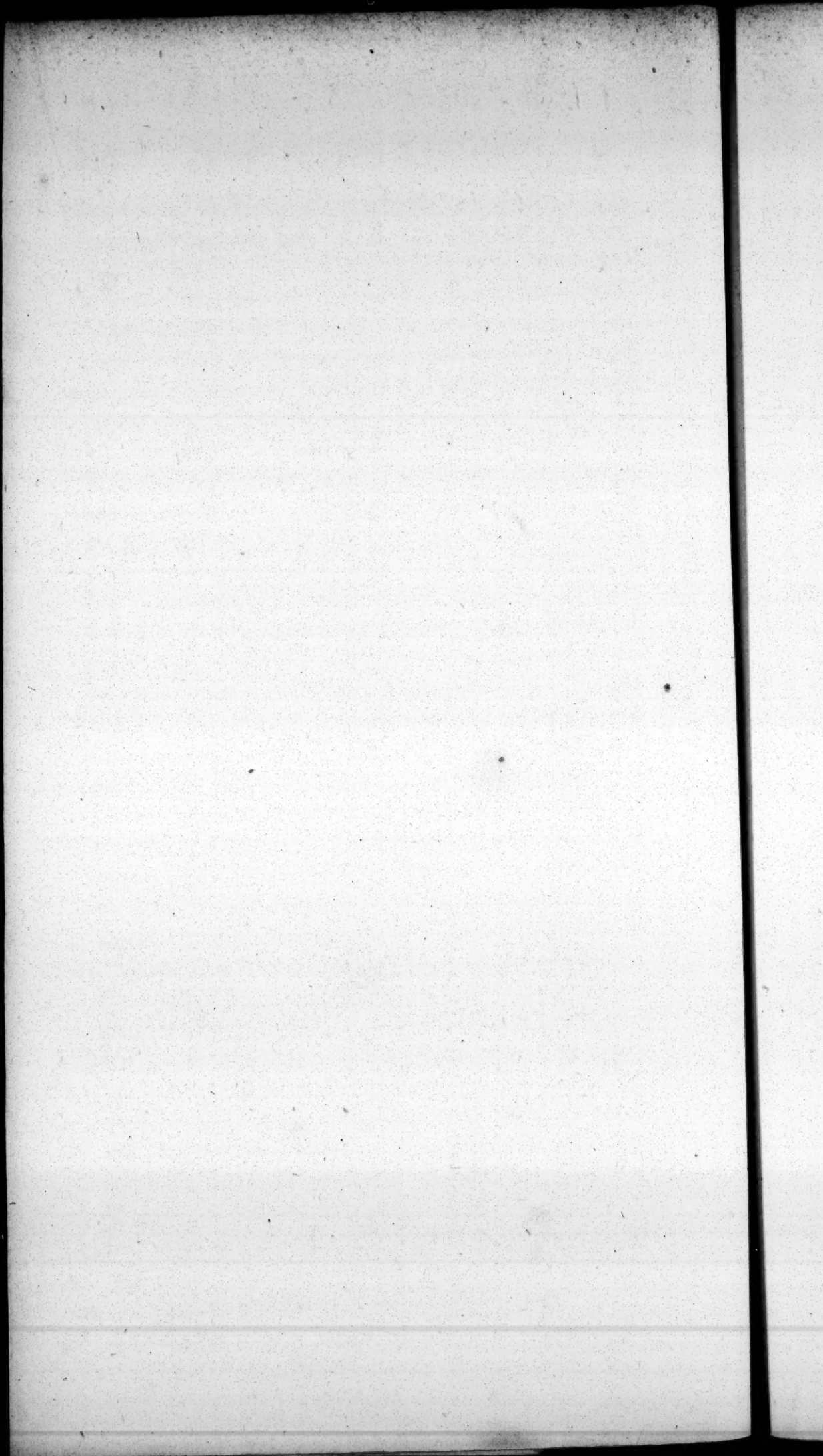
REDD'



A
Map of the
Borough & Manor
of
STEYNING;
as traced in
1792.

* marks the situation of
certain of the old Boró houses.





REDD' ASSIS'. Set r' comp'm de ijd. de lib'o redd' Joh'is Sholwyn per annum pro un' Burgag' ibm nup' Comp' fol' ad Fest' Sc'i Andree' t'm. Et de xvjd. de Ric'o Farnesfold jun' per annum pro un' Burgag' quond'm Hylders fol', &c. Et de xvjd. de eod' Ric'o pro un' al' Burg' quond'm Hylders predict' fol', &c. Et de viij. de Joh'e Guylh'm pro un' Burgag' quondm' Wylshyres fol', &c. Et de ijd. ob' de Edwardo Parson per ann' pro un' Burg' nup' Iryshes fol', &c. Et de vjd. de pred' Ric'o Farnesfold per ann' pro un' Burgag' ib'm nup' Petri Farnesfold fol', &c. Et de ijd. ob' de Joh'e Levett per annum pro una via usq' Newelme fol'e, &c. Et de xd. de Thoma Bennett per ann' pro un' Burg' jacen' in Shippyngstrete nup' Joh'is Palm' fol', &c. Et de vjd. de Thoma Turnor per ann' pro un' Burgag' nup' Jesepps fol'e'. Et de xijd. de Will'mo Palmer Jun. pro un' Burgag' ib'm vocat *Teldehalle* fol', &c. Et de ijd. de Ric'o Farnesfolde de Testers pro un' via usq' Domu' s' fol', &c. Et de xjd. de eod' Ric'o pro un' Burg' vocat' Testers fol', &c. Et de vd. de eodm Ric'o per ann' pro un' Burg' ib'm quond'm Snellyngs fol', &c. Et de vd. de pred' Ric'o pro un' Burgag' ib'm vocat Danyells fol', &c. Et de ijd. ob' de prefat Ric'o per ann' pro un' Burgag' ib'm fol', &c. Et de ijd. ob' de Edwardo Parson per ann' pro Parcel' Burgag' nup' Cadma's fol', &c. Et de ijd. ob' q' de eod'm pro un' Burgag' quond'm Jryshes fol', &c. Et de xijd. ob' de Will' Gravesen pro un' Burgag' nup' Danyels fol', &c. Et de ijd. ob' de Ric'o Okenden per ann' pro un' Burgag' nup' Penders fol', &c. Et de ijd. ob' de Margareta Pellett vid' pro parcell' uni' Burgag' ib'm nup' Nortons Et de viij. de pred' Ric'o Farnesfold de Testers pro un' Burgag' quond'm Nortons fol', &c. Et de xijd. de Jacobo Pellett pro un' Burgag' ib'm quond'm Snellyngs fol', &c. Et de vij de eod'm pro un' al' Burgag' ib'm nup' Snellyngs fol', &c. Et de vjd. de Leticia Turnor pro un' Burgag' nup' Jesepps fol', &c. Et de vjd. de Ric'o Farnesfold Sen'

per ann' pro un Burgag' ib'm nup' Burtons fol' &c. Et de
 vijd. de Margeria Pellett vid' pro un' Burgag' ib'm nup'
 Swannes fol', &c. Et de xvijd. de Thoma Cok pro un'
 Burgag' ib'm nup' Danyels fol', &c. Et de xiiijd. de Rad'
 Farnefold pro un' Burgag' nup' Vesks fol'e. Et de vjd. de
 Fraternitate de Steynnyng per ann' pro un' Burgag' nup'
 Normans fol', &c. Et de ijd. de Ric'o Pellett pro parcell'
 Burgag' nup' Wyfks fol', &c. Et de iiijd. de pred' Jacobo
 Pellett pro parcell' Burgag' nup' pred' Wyfks fol', &c. Et
 de vijd. de Thoma Ad'm per ann' pro un' Burgag' ib'm
 nup' Wyfks fol', &c. Et de jd. de Cantar' de Steynnyng
 per ann' pro parcell' Burg' ib'm nup' Potkyns fol', &c.
 Et de xd. de Joh'e Pypar per ann' pro un' Burgag' ib'm
 nup' Faggers fol'e'. Et de iijd.ob' de eodm Joh'e per
 ann' pro un' Burgag' nup' Godstowes fol', &c. Et de vijd.
 de eod'm Joh'e pro un' Burgag' ib'm nup' Faggers fol', &c.
 Et de ijd. de eod'm Joh'e per ann' pro un' alio Burgag'
 nup' Faggers fol', &c. Et de xiiijd. de Thoma Adams
 per ann' pro un' Burgag' voc' Bryten nup' Arnolds fol',
 Et de xiiijd de Joh'e Pypar per ann' pro un' Burgag' nup'
 Faggers fol', &c. Et de vijd. de Thoma Bennett per ann'
 pro uno Burgag' ib'm vocat' Godstaves fol', &c. Et de
 xiiijd. de Rob'to Humfray per ann' pro uno Burg' ib'm
 nup' Smythes fol', &c. Et de vd. de eod'm Rob' per ann'
 pro parcell' Burgag' nup' ejusd'm Smythes fol', &c. Et
 de vijd. de Thoma Whetley de ann' pro parcell' Burgag'
 nup' Alicie Wolvyns fol', &c. Et de xxd. de eod'm Thoma
 per ann' pro uno Burgag' nup' Walt'i Bridg's fol', &c.
 Et de viijd. de Thoma Bennett ann' pro uno Burgag' ib'm
 quond'm Goslyngs & nup' Palm's fol', &c. Et de vijd.
 de Joh'e Patching per ann' pro uno Burgag' ib'm nup'
 Omond fol', &c. Et de viid. de eod'm Joh'e per ann'
 pro uno Burgag' pred' Omond fol', &c. Et de vd. de
 Ric'o Ad'm. per ann' pro uno Burgag' voc' Bridgehouse
 fol', &c. Et de iijd. de Will'o Pellett Sen. per ann'
 pro

pro uno Burgag' nup' Faggers fol', &c. Et de vijd. de eod'm Will'mo per ann' pro un' Burgag' quond'm Polyngs & nup' Kyngs fol', &c. Et de xixd. de eod pro un' Gardin' nup. Hulls fol', &c. Et de xiiijd. de Joh'e Wassher per ann' pro un' Burgag' ib'm vocat' Hill Place fol', &c. Et de iiijd. de eod'm Joh'e per ann' pro parcell' Burgag' quond'm Hulls & nup' Faggers fol', &c. Et de iiijd. de pred' Joh'e per ann' pro un' Burgag' ib'm nup' Scolletts fol', &c. Et de viijd. de Cantar' pred' per ann' pro un' Burgag' nup' Wodleys fol', &c. Et de xiiijd. de Will'mo Slatter per ann' pro un' Burgag' nup' Campyons fol', &c. Et de xjd.ob' de Fraternitate pred' pro un' Burgag' ib'm vocat' Stockers fol', &c. Et de xixd.ob' de pred' Willm'o Pellett Sen. per ann' pro un' Burgag' nup' Stockers fol', &c. Et de vjd. ob' de pred' Ric'o Farnesfold per ann' pro un' Burgag' ib'm. nup' Wallys fol', &c. Et de xxiijd. de Joh'e Berde per ann' pro un' Burgag' quon'dm Longs fol', &c. Et de xiiijd. de Petro Hunte per ann' pro un' Burgag' nup' Lowers fol', &c. Et de xiiijd. de Will'o Slatter per ann' pro un' Burgag' nup' Pytchers fol', &c. Et de vd. de Margareta Pellett vid' per ann' pro un' Burgag' nup' Pytchers fol', &c. Et de vd. de Margareta Pellett vid' per ann' pro un' Burgag' unp'. Wells fol', &c. Et de xiiijd. de ead' Margareta per ann' pro un' Burgag' nup' Stondridg fol', &c. Et de xiiijd. de Rob'to Atwood per ann' pro un' Burgag' ib'm nup' Humfray fol', &c. Et de vijd. de Thoma Holland per ann' pro un' Burgag' nup' Mathewys fol', &c. Et de vijd. de Fraternitate pred' pro un' Burgag' quond'm Wolgars fol', &c. Et de vijd. de Petro Farnesfold per ann' pro un' Burgag' nup' Hylders fol', &c. Et de vijd. de pred' Petro Hunte per ann' pro un' Burgag' nup' Lamwalls fol', &c. Et de iijd.ob. de Joh'e Bode per ann' pro un' parcell' Burg' nup' Bodyes fol', &c. Et de iijd de eod' Joh'e pro parcell' Burg' nup' Palm's fol' &c. Et de vijd. de pred' Will' Pellett Sen. pro un' Burgag' ib'm nup'

Garies fol', &c. Et de ijd. de Thoma Farnesfold per ann' pro un' Burgag' ib'm nup' Gascoynes fol', &c. Et de vjd. de Ric'o Farnesfold Jun. pro un' Burgag' ib'm nup' Dudlyns fol', &c. Et de jd. de Rob'to Storryd per ann' pro un' parcell' Burgag' nup' Mylwards fol', &c. Et de ijd.ob' de Fraternit' pred' pro un' Burgag' ib'm nup' Nortons fol', &c. Et de xiiij. de ead' Fraternitate pro al' Burgag' nup' Alwyns fol', &c. Et de xxjd. de Joh'e Patchying pro un' Burgag' vocat' Staples fol', &c. Et de iiij. de Rad' Farnesfold per Ann' pro iij parcell' Burgag' ib' nup' Beltons fol', &c. Et de xxd. de Ric'o Farnesfold Jun. pro un' Burgag' ib'm nup' Benetts fol', &c. Et de xiijs. iij. ob. de eod'm Ric'o per ann' pro divers' Burgag' ib'm fol', &c. Et de xvjd. de pred' Fraternitat' per ann' pro un' Burgag' ib'm nup' Ad'm Orgills fol', &c. Et de xvjd. de Margareta Pellett Vid' per ann' pro un' Burgag' ib'm nup' Orgills fol', &c. Et de xxd. de Rob'to Bennett per ann' pro un' Burgag' ib'm nup' Bylleys fol', &c. Et de ixd. de eod' Rob'to pro un' Burgag' ib'm nup' Benetts fol', &c. Et de xvjd ob. de dict' Rob'to pro un' Burgag' ib'm nup' ejusd' Benetts fol', &c. Et de vjd. de Redd. divers' person' pro parcell' de Newclose fol', &c. Et de xd. de Cantar' pred' ann' pro un' Gardin' ib'm vocat' Canterbury Gardyn fol', &c. Et de ixd. de Will' Pellett Sen. per ann' pro parcell' Burgag' ib'm jacen' in le Fayrclose fol', &c. Et de xd. de eod' per ann' pro parcell' terr' ib'm jacen' in Farecroft pred' quond'm Nortons fol', &c. Et de iij. de Joh'e Goffe per ann' pro di' acr' terr' jacen' in Crofto pred' nup' Bodyngs fol', &c. Et de iij. de Henrico Wrey per ann' pro di' acr' terr' in Croft' pred' fol', &c. Et de vijd. de Margeria Bronnesbury fol', &c.

Sm. iijl. vjs. jd, ob' q'

PROFIC' CUR' IB'M. Et de xxvijs. jd. de plit' five perquis' Cur' ib'm hoc anno tentat' viz. Relev' vjs. vd.
Daunger

Daunger Money x s. & Amere' ixs. viijd. ut per Rol' sup'
hunc Comp'm examinat.

Sm xxvij s. jd.

Sm. to' lis' Rete. cxij s. ijd. ob. q.

D'quib.

FEOD. COMPUT'. Id'm computat in Feod' ipfius
Compu' causa officii pred' hoc anno occupand' & ex-
ercend' prout' allocar' confuev'it ex antiqua confuetud' ad
ij s. iij d. per ann' iij s. iij d.

Sm. iij s. iij d.

LIB'AC' DENAR'. Et in Den'iis per pred' Comput'
liberat' ad man' Rob'ti Bowyer generos' deput' Rec' par-
ticular' Dni' Reg's ib'm t'm ante Com'pm q'm sup' deter-
minac' ejusd'm prout per Bill' inde man' dict' deputat' Rec'
signat' sup' hunc comp'm examinat' & inter memor' hujus
anni remanent'.

Sm. cvij s. viij d. q.

Sm. alloc' & Liberac' predict. cxj s. q. Et debet
ijs. ijd. ob. q. alloc' ei ut de amere' illevabil' eo q'd
nichill habet infra dominiu' istud per quod distring'
possunt ex Scro dict' Computs'.

[B.] P. 17.]

THE MINISTER'S ACCOUNT in the 4th
Year of the Reign of Queen Elizabeth.

COMITAT' SUSSEX. Comp' omnium et singulor'
Ball' Firmar' Coll' Prepositor' Bedell' ac al' Ministror' et
Officiar' quorumcunque omn' et singulor' Honor' Castr'

F f 3

Dominor'

Dominior' Manerior' Terr' Tent' aliarumque possels' et hereditam' quor'cunque tam temporal' quam spiritual' dudum infra gubernacionem sive supervis' nuper Cur' Augment' Reven' Corone Regiæ et modo virtute tam cujusdam act' Parliamenti quam cujusdam comission' per eandem Dominam Reginam vigore ejusdem Act' Willo' Dom' Marchien' Winten' Domino Thes' Anglie direct' ad cur' Schac' Reg' Mag' unit' et annexat' prout in iisdem Act' et Comission' plenius liquet et apparet, Viz, Comp' a festo sanct' Michael' Archang' anno regni illustr' Domine nostre Elizab' Dei grat' Angl' Franc' et Hib' Regin' fid' defens' &c. Tercio, usque idem fest' sanct' Mich' Arch' anno regni ejusdem Dom' Regin' quarto, scil' per unum ann' integr'.

Terr' et Possels' nup' honor' de Petworthe

BURG' DE STEYNYNGE. De lxxix s. vii d. ob. q' de redd' Assis' liberor' ibid' per ann' hic non r.eo quod Dom' Regina Elizabeth nup' per literas suas patent' dat' ap' Westm' xxvii die Marcii anno Regni nost' quarto' dedit et concessit predict' redd' Assis' liber' tenenc' Burg' de Steyninge predict', cum omnibus et singulis suis pertinen' dict' Burg' de Steyning predict' pertin' sive spectan' Roberto Harrys et Roberto Watton hered' et assignat' ff imperpet' Habend' exit' et profic' predict' Burg' a festo sanct' Mich' Archang' ult' preterito hucusque provenien' sive crescen' &c. Tenend' de nob' Hered' et Successor' nostris ut de Maner' de Est Grenewich in Com' hanc per fidelitatem tantum in libero Socagio et non in Capit' pro omnib' redd' serv' et demand' quibuscunque Nobis Heredib' et Successor' nostris proinde de certo solvend' seu onerand' prout in eisdem literis paten' plenius apparet.

[C.] P. 417.

PARTICULAR for the Grant of Steyning to
the Duke of Norfolk.

Parcell' Possession' nup' Honor' de Petworthe
Com' Suffex.

Burg' de Staynynge in Com. pred'.

Val' in Redd' assis' liberor' tenen ib' per Ann'	℥.	s.	d.
lxxix s. vii d. ob' qu' Perquis' Cur ib'			
communib' Annis x s.	-	4	9 7 $\frac{3}{4}$
Reps' viz. in. feod' preposit' ib' per Ann.	-	0	3 4
Et Reman' clare per Ann'	-	4	6 3 $\frac{3}{4}$

29 Dec. 1561 ratyd for the Duke of Norf' at xxxi years
purchas.—Robert Harrys.

Mem'. The premises be no parcell of the Duchies of
Lancaster or Cornewall and dothe not appere before
me to be any parte of thauncyent inheritance of the
Crowne.

Item. They be no parcell of any house reserved for
thause of the Quenes Highnes nor parcel of any her
Hignes Parkes Forests or Chaces.

Item. They be farre distante from any the Quenes
Hignes houses whereunto the Kings of this Realme have
had any accesse.

Item. They be not parcell of any possessions which were
fometyme of tholde inheritance of the crowne and were
given owt by particular estate and now returned agayne to
my knowledg.

Item. What quantity of greate Tymber mete for the
Quenes Highnes Shippes or other buildings, or any other
woodes

woodes and underwoodes be growing in and upon the same are to be certyfyed by the surveior of the woodes.

Item. Yt appereth not in any recorde before me that the premises be parcell of any manor or lordship.

Item. Ther ys no mencion in any recorde remaynyng with me what number of Acres the premises do conteyne. I know not the goodnes thereof nor whether there be any myne or mynes of Cole Slate or Mettall within or upon the premises.

Item. This is the first particular that I have made of the premises sythence the beginning of this present Commisyon for sale of landes.

Ext' 27 die Novembris 1561
per me Johan' Thomson Audit'.

19 Decemb 1561 rated for the Duke of Norfolke. The Clere Yerely value of the premises iiij £. vi s. iij d. ob' q'. which rated at 31 yeres purchase amounteth to - - - - cxxxiii £. xi s. 8 d. q'

The Moiete of the money to be paid in hand and the rest within 14 days next after.

The Quenes Majtie. to discharge the purchaser of all incumbrances (except leases and the covenants in the same and except the reprises abovementioned.)

The Tenure in Socage.

The Purchaser to have thissues frome Michelmas last paste.

The Purchaser to be bound for the Woods.

The Leade Bells and Advowsons to be excepted.

N. Baco, C. S.

Winchester

W. Cecill

G. Gerrard.

Sm' cxxxiii £. xi s. viij d. ob.

ex' per me Joh'. Conyers.

(Indorsed)

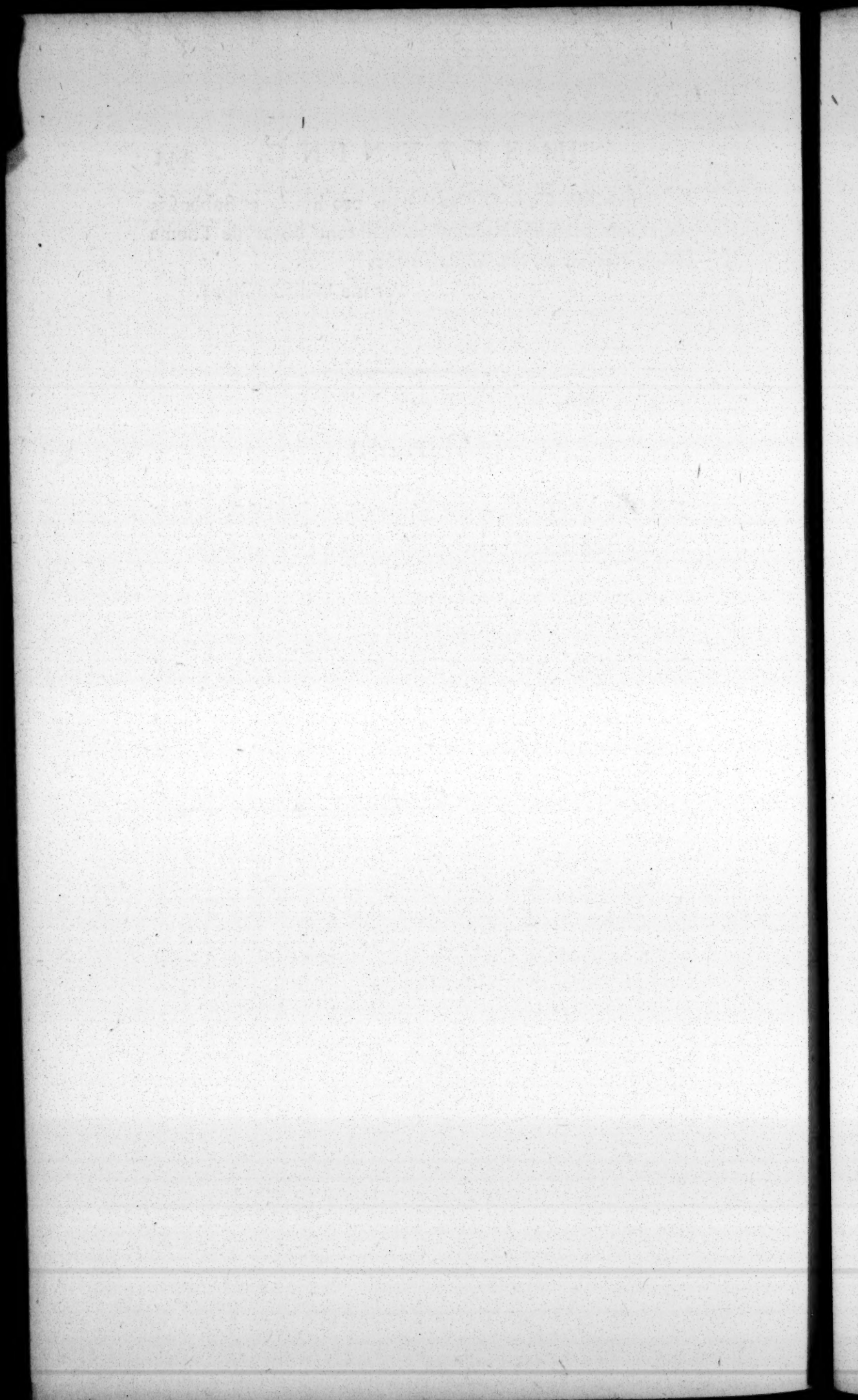
(Indorfed) Ccpi Obligationem pro Bosc', et Subboscis de et sup' premissis crescent' in sum' cent' librar' de Thoma Duce Norfolciæ, &c. xi Jan. 1561.

Per me Will' Phillipps.

[D.] P. 417.]

EXTRACT from the abovementioned Grant of
Queen Elizabeth to the Duke of Norfolk.

“ *Accciam* totum illud Burgum nostrum de Stayning cum suis Jurib' Membris, Libertatib' et pertin' univers' in Com' nostro Suffex nup' Honori de Petworth in eod' Com' Suffex dudum spectan' et pertinen' ac parcell' possession' inde quond' existent' quocumque nomine vel quib' cunque nominib' idem Burg' censeatur nominet' seu appelletur. Ac omnia et omnimod' Terr' Ten' Prata Pascuas Pasturas Boscus Subboscus Reddit' Reversiones et Servicia ac cetera hereditamenta nostra quæcunque cum suis pertin' universis dicto Burg' quoquo mod' spectant' seu pertinen'. Accciam totum illum Redditum Assise nostrum Septuaginta novem solidor' septem denar' unius oboli et unius quadrantis et servitium nob' spectan' et pertinen' de liberis tenentib' infra Burg' de Stayning predict' in dict' Com' nostro Suffex.”



VII.

THE

C A S E

Of the BOROUGH of

C I R E N C E S T E R,

In the County of GLOUCESTER.

The Committee was appointed on Monday the 5th of March 1792, and consisted of the following Members :

Lord Viscount Belgrave, *Chairman,*

General Adeane,

William Pochin, Esq.

James Amyatt, Esq.

Sir George Jackson, Bart.

Lord Viscount Parker,

James Martin Esq.

Hon. Robert Banks Jenkinson,

Henry Beaufoy, Esq.

John Pardoe, Esq.

Hon. Cropley Ashley,

William Sotheron, Esq.

John Rolle, Esq.

George Vansittart, Esq.

Francis Annesley, Esq. } *Nominees,*

Petitioner,

Robert Preston, Esq.

COUNSEL,

Mr. Piggott, Mr. Douglas, Mr. Palmer,

Sitting Member,

Richard Master, Esq.

COUNSEL,

Mr. Graham, Mr. Dauncey.

* * * On the 15th day of May, the Committee reported to the House, that Lord Viscount Belgrave was unable to attend, from illness; when leave was given his Lordship to absent himself from any farther attendance on the Committee. On the following day Lord Viscount Parker was called to the Chair.

THE
C A S E

Of the Borough of

C I R E N C E S T E R.

THE petition of Mr. Preston stated, That at the last general election of burgesſes to ſerve in parliament for the town and borough of Cirenceſter, in the county of Glouceſter, the Right Hon. Henry Bathurſt, commonly called Lord Apsley, Richard Maſter, Eſq. and the petitioner, were candidates; and that John Chaundler Ready, Gentleman, ſteward, and Joſeph Pitt, Gentleman, bailiff of the ſaid borough, preſided at the election as the returning-officers: That the petitioner was duly elected a burgeſs to ſerve in parliament for the ſaid town and borough, by a majority of the perſons duly qualified to vote by the conſtitution of the ſaid town and borough; but that the ſaid ſteward and bailiff thought fit, in violation of the conſtitution of the ſaid town and borough, to admit a great number of perſons to vote for the ſaid Richard Maſter, who had no right to vote at the ſaid

said election, and rejected divers legal votes which were tendered in favour of the petitioner: That notwithstanding the due election of the petitioner as aforesaid, the said steward and bailiff, under colour of a pretended majority of votes thus illegally admitted, had unduly returned the said Richard Master, as one of the burgessees elected to represent the said town and borough in parliament, to the injury of the persons entitled to vote, &c. and of the petitioner, who was duly elected.

The petition being read, the Committee deliberated, and a motion was put and carried, *That the two counsel who shall appear on each side to the Committee, at the commencement of every morning's sitting, be alone allowed to be heard in the course of that day.*

Mr. Douglas stated the numbers to have been, for

Lord Apsley	-	302
Mr. Master	-	261
Mr. Preston	-	253

and proposed to strike off the poll of Mr. Master seventy votes, and to add seven to the poll of Mr. Preston. The seventy voters he distributed into three classes, viz. eighteen who had not any legal settlement in the borough; thirty-four who were not householders, but inmates; and eighteen who

who had received alms. On the other hand, Mr. Graham proposed to substantiate the votes objected to by the petitioner, and to strike off sixty-eight from the petitioner's poll, viz. forty as not being householders, eighteen as not being settled, eight as being paupers, and two as having offices under government. He also proposed to add eight to the poll of the sitting member.

Mr. Douglas, before he called any witnesses, delivered in a statement of the right of election as follows :

“ The counsel for the petitioner state, That
“ according to divers determinations made in
“ the House of Commons on the 21st of May
“ 1624, the 4th of November 1690, and the
“ 8th of December 1709, and the true intent
“ and meaning of the said determinations, as
“ well as by constant usage, the right of election
“ in the borough of Cirencester, in the county
“ of Gloucester, is in the inhabitants house-
“ holders legally settled : That inmates have
“ no right to vote for the said borough, nor
“ inhabitants of the Abbey and Emery, and
“ Spiringate-lane ;” which was admitted by the
counsel for the sitting member.

On the sixth day of sitting, after having heard much evidence relative to the settlements of voters, the Committee came to the following resolution :

That

That it is the opinion of this Committee that a man's having given a vote at Cirencester, is a presumptive proof that he had a right to give such a vote; and that nothing less than proof of his having had, at some preceding period, a settlement elsewhere, ought, in the opinion of the Committee, to outweigh the presumption arising from his vote.

On the 16th day of sitting, after having heard much evidence on objections taken to many voters that they were not householders, and Mr. Graham having opened the sitting members case, the Committee determined,

“ That the Chairman be requested to inform
“ the counsel for the parties, that it is the wish
“ of the Committee to decide on the following
“ question: What is a householder within the
“ borough of Cirencester? That for this purpose
“ they are desirous of hearing Mr. Dauncey in
“ support of the arguments of Mr. Graham, on
“ those votes on which no further evidence is
“ meant to be offered; and that after they shall
“ have heard the counsel for the petitioner in
“ reply, the Committee will proceed to decide
“ on the said votes.”

The names of seven persons were then given in, and some evidence being adduced by the counsel for the sitting member to support their votes, and Mr. Dauncey being heard to
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sum it up, and Mr. Douglas in reply, the Committee deliberated, when a motion was made,
“ That the Committee do come to some general
“ resolution respecting the definition of a house-
“ holder, previous to the decision of the separate
“ votes.” *Which was resolved in the affirmative.*

The minutes proceed as follows :

“ The counsel for the petitioner having
“ stated, and the counsel for the sitting member
“ having admitted, that according to divers
“ determinations made in the House of Com-
“ mons on the 21st of May 1624, the 4th of
“ November 1690, and the 8th of December
“ 1709, and the true intent and meaning of
“ the said determinations, as well as by constant
“ usage, the right of election in the borough of
“ Cirencester, in the county of Gloucester, is
“ in the inhabitants householders legally settled,
“ that no inmates have a right to vote for the
“ said borough, nor inhabitants of the Abbey,
“ the Emery, and Spiringate-lane ;”

“ Resolved,

“ That it is the opinion of this Committee,
“ that no person can be deemed a householder
“ who does not possess an exclusive right to the
“ use of the outward-door of the building, al-
“ though by taking inmates he may have re-
“ linquished for a time the exercise of that ex-
“ clusive right ; neither can a person whose

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“ habitation

“ habitation is composed of more apartments
“ than one be deemed a householder, unless he
“ also possesses an exclusive right to the use of
“ the staircase, door-way, or other passage that
“ forms the means of communication between
“ his several apartments, although by taking in-
“ mates he may have likewise relinquished for
“ a time the exercise of that right.”

“ The original right to an exclusive use is
“ then the point of discrimination between the
“ householder, on the one hand, and the inmate
“ on the other.”

“ The term *outward-door to the building*, does
“ not include within its meaning the gates or
“ outward-door of a court or passage open to
“ the sky. A house may contain but a single
“ apartment; yet it does not follow as a ne-
“ cessary conclusion that a single apartment,
“ though furnished with a separate outward
“ door, will constitute a house; for a shop or
“ stall, unless it be used as a dwelling, is cer-
“ tainly not a house.”—They then proceeded to
decide on the seven votes.

On this subject the following resolutions were
afterwards added :

“ That it is the opinion of this Committee,
“ that the legal meaning of the terms *house-*
“ *holders* and *inmates*, must be determined on
“ the

“ the general principles of the law of the land,
“ not on any ideas suggested by local usage (a):
“ That it is the opinion of this Committee,
“ that if a passage is considered as a street-
“ passage (though covered) all the houses that
“ have separate outward-doors opening into that
“ passage are good votes.”

On the 35th day, the counsel for the sitting member proceeding to offer evidence with respect to the vote of John Tombs, No. 410, on the poll, the counsel for the petitioner objected, that there was no such person on the poll; after argument, it was resolved,

That it is the opinion of this Committee, that at this period, no notice having been given in the opening of the case, they cannot permit the counsel for the sitting member to produce evidence to prove that the name of a voter, as recorded in the poll, is erroneous.

Mr. Piggot closed his reply for the petitioner on Tuesday the 8th of May, being the 51st day of the sitting of the Committee; when the court proceeded to decide upon the validity of the

(a) A witness of the name of Samuel Webb, who had been many years overseer of the poor, being asked what he conceived (from the information he had received) to be a proper tenement to give a man the right of voting for Cirencester? answered, “ Such a tenement that a man might occupy with his family, conveniently to himself, and without being interrupted by other people.”

votes which had not hitherto been decided, when (as the minutes state) there appeared a majority of three for the petitioner.

The following voters were objected to, as living without the borough :

Francis Hooper : he lived in a house on the London road, the door of which was three yards beyond a certain stone, said, by the petitioner's counsel, to be the boundary of the borough on the side of the Spiringate : his vote was decided to be *Good*.

Benjamin Brown was also objected to by the petitioners, as living in the Spiringate, and as not being a householder : his house was said to be the last in Dollar-Ward. The decision of the Committee was, " That the vote of Benjamin Brown is a bad vote, as living in Spiringate-lane.

John Ellis tendered his vote for the fitting member, but was objected to, as living within the abbey precincts. The entrance into his house forms an opening in the abbey wall. The Committee decided, " that his vote ought not to be put upon the poll."

George Huse tendered to vote for the fitting member, but was objected to, as living without the borough : his house is called the Emery Gateway. The Committee decided, " that his " vote ought not to be put upon the poll."

Robert Boyce, who voted for the fitting member,

ber, was gamekeeper to Lord Bathurst, by whom he was allowed a house rent free, as part of his wages. The voter paid the rates ; which were allowed him by the noble Lord. His vote was decided to be *Bad*.

Thomas Yarnold, who also voted for the sitting member, was steward to Lord Bathurst, from whom he had a house free from taxes, as part of his salary. He said, if he was deprived of his office, he did not apprehend that he would be obliged to quit his house without legal notice : But his vote was decided to be *Bad*.

The small-pox broke out in Cirencester in the commencement of 1790. Several persons sent their children to the parish pest-house to prevent the contagion from spreading ; and were generally attended by the parish-apothecary, though some employed their own apothecary. The circumstances of these persons were different ; some were able to support their families, and sent their children provisions ; others were paupers. One of the voters was unwilling to send his child to the pest-house ; but was persuaded to do so by the overseers of the poor, for the good of the town. This overseer had formerly sent a child of his own there, to induce a creditable person to send his servant. The disorder by this method was prevented from spreading, and disappeared that year. The
counsel

counsel for the petitioner being heard against the admissibility of these voters, and the counsel for the sitting member in favour of them, the Committee determined,

That it is the opinion of this Committee, that those persons who were admitted, or any part of whose families have been admitted into the pest-house on account of the small-pox, without receiving any other parish relief, were not thereby disqualified from voting at the last election at Cirencester.

Samuel Morris was objected to, as being a mail-guard. These guards are appointed by the Comptroller-general of the Post-office, and usually find two sureties in ten pounds each, and take an oath to discharge their duty properly, which is safely to receive and deliver the letter-bags, and to receive and account for the postages of letters which are delivered short of the post-towns; for which they also receive a penny for their trouble. The voter was paid ten shillings and sixpence a week by the Post-master at Oxford. The Committee having deliberated, resolved,

That it is the opinion of this Committee, that the office of guard of a mail-coach does not operate as a disqualification under the act of the 22 George III. commonly called Crewe's Act.

On

On Thursday the 5th of April, Lord Viscount Parker acquainted the House, that the Committee being directed by act of parliament not to sit to-morrow (Good Friday) and having sat twenty-seven days, desired, that instead of adjourning till Saturday next, and from thence to Monday, they might be at liberty to adjourn from this day till Monday morning next, at eleven o'clock; such adjournment being with the consent of all parties: upon which it was *ordered*,

That the said Select Committee have leave to adjourn from this day till Monday morning next, as desired. The House itself adjourned till the 17th of April.

On Thursday the 10th of May, Lord Viscount Parker informed the House, that the Committee had determined,

That Richard Master, Esq. was not duly elected a burges to serve in the present parliament for the town and borough of Cirencester, in the county of Gloucester :

That Robert Preston, Esq. the petitioner, ought to have been returned a burges, &c. and was duly elected : And,

That neither the petition or the opposition to it, appeared to be frivolous or vexatious.

And

And the said determinations were ordered to be entered in the Journals of the House.

Afterwards it was ordered,

That the clerk of the crown do attend the House to-morrow morning, with the last return for the borough of Cirencester, in the county of Gloucester; and amend the same by erasing out the name of Richard Master, Esq. and inserting the name of Robert Preston, Esq. instead thereof.



T H E E N D.

